



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL CNR FFT OLC PSF RP RR MNDCL-S OPU

Introduction

This hearing was scheduled as a continuation of a matter adjourned on February 20, 2018. At the original hearing, the parties agreed to settle only the portion of their dispute related to possession of the rental home with the tenant agreeing to vacate the premises by 1:00 P.M. on March 4, 2018.

This hearing dealt with applications from both parties:

The landlord applied for:

- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and utilities.

The tenant applied for:

- a Monetary Order pursuant to section 67 of the *Act* for loss and damage.

Both the tenant and counsel for the landlord, T.S. attended the hearing. Both parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Both parties confirmed receipt of each other's applications for dispute resolution and evidentiary packages. Both parties are found to have been duly served in accordance with the *Act*.

Issue(s) to be Decided

Is either party entitled to a monetary award?

Background and Evidence

At the February 20, 2018 hearing the tenant agreed to an Order of Possession being issued to the landlord which required her to vacate the rental unit by 1:00 P.M. on March 4, 2018. Both parties agreed that the tenant's departure from the rental unit would not prejudice any future application by the landlord related to possible compensation for unpaid rent.

The parties are each seeking a monetary award. The tenant said that she did not have an exact figure, but said she felt \$23,000.00 adequately reflected her application. Counsel for the landlord agreed to accept this figure cited by the tenant.

The landlord was seeking a monetary award of \$9,307.48 for an unpaid gas bill, along with unpaid rent for February 2018 and rent for the seven days in March 2018 that the tenant overheld in the rental unit.

This tenancy began on May 1, 2013. Rent was \$3,000.00 per month, rising to \$3,281.00 over the course of the tenancy, while a pet and security deposit of \$1,500.00 each were collected at the outset of the tenancy and continue to be held by the landlord.

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

The tenant was served with two separate 10 Day Notices to End Tenancy for Unpaid Utilities, along with a 2 Month Notice to End Tenancy for Landlord's Use of the Rental Property. On November 14, 2017 the landlord served the tenant with a 10 Day Notice for Unpaid Utilities citing a figure of \$9,726.45. Counsel explained that following a discussion with the landlord, this figure was found to be incorrect and this 10 Day Notice was withdrawn by the landlord. On December 22, 2017 the landlord issued a second 10 Day Notice for unpaid utilities, this one citing a figure of \$9,307.48. On November 28, 2017, the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice"). The reason cited on the 2 Month notice was listed as, *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

Counsel for the landlord explained that a 10 Day Notice was issued to the tenant after a December 22, 2017 demand letter for non-payment of a gas bill did was sent to the tenant. Following the issuance of this 10 Day Notice, the tenant applied for dispute resolution. While the parties awaited their hearing date, the property was sold and the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use. The tenant said she was under the impression that rent was not due for the month of February because she had been served with a 2 Month Notice. The tenant acknowledged overholding in the rental unit and agreed to pay rent for the seven days in March 2018 that she remained in the rental unit.

During the hearing, the parties agreed that the landlord had received an unexpected gas bill for \$13,066.60, which the landlord paid after receiving a notice for payment from the company. Counsel for the landlord explained that the tenancy agreement signed between the parties showed that rent for the home did not include gas and that the tenant had failed (as reportedly instructed to do so) to register the account in her name when she first took possession of the rental. For unknown reasons, the gas company continued to supply gas to the property, despite no bill being paid for over six years. No evidence was presented by either party that there was any knowledge of bills accumulating on the account over this time. The company charged the landlord for usage on the property from the start of his ownership on August 12, 2011 to August 17, 2017. The landlord sought return of the funds related only to the time period that the tenant occupied the rental home, until the error was discovered, in this case May 1, 2013 to August 17, 2017, for \$9,307.48.

A copy of the tenancy agreement supplied by the landlord, along with the addendum to the tenancy agreement does not indicate that gas is included with monthly rent, noting only that rent included water, stove and oven, dishwasher, refrigerator, window coverings, laundry and garbage collection.

The tenant argued that she was unaware that she had to register with the gas company. She explained that she opened accounts with Shaw Cable and BC Hydro and was under the impression that her effort to open an account with BC Hydro was adequate to cover her responsibilities related to utilities. The parties disagreed on their expectations related to utilities, with the tenant arguing that she did not know that she had to register for gas, while counsel for the landlord stated that it was the landlord's understanding that the gas bill would be covered by the tenant.

The tenant attempted to show through her evidence and oral submissions that numerous aspects of the home required significant repair, and would possibly be partly to blame for the very high gas bill.

The tenant's application is for a monetary award of \$23,000.00 related to loss of quiet enjoyment, repairs to the property for which she sought reimbursement and compensation for loss under the tenancy agreement. In addition to the application before me, the tenant confirmed that she was currently seeking damages in the Supreme Court of British Columbia for injuries allegedly sustained on the property. A copy of the Style of Cause was included with the landlord's evidentiary package.

The tenant said that the majority of her claim related to the interference in her life that she experienced as a result of the landlord's attempt to sell the home, the state of disrepair in the home and the landlord's failure to make repairs despite numerous requests to do so.

Analysis – Landlord's Monetary Award

The landlord has applied for a monetary award of \$9,307.48 for an unpaid gas bill, along with unpaid rent for February 2018 and rent for the seven days in March 2018 that the tenant overheld in the rental unit.

The tenant acknowledged at the hearing that she overheld in the rental unit for "6 or 7 days" in to March 2018; however, she explained she was under the impression she could do so because the Order of Possession granted her until March 4, 2018 to occupy the rental unit. The tenant had a right to occupy the rental unit until March 4, 2018 but rent was still due for that time. I find that the tenant did not pay rent for March 1 to 4, 2018 and overheld in the rental unit until March 7, 2018. Pursuant to section 57 of the *Act* a tenant must pay the landlord for any time period in which they overhold in a rental unit. I find that the landlord is therefore entitled to a monetary award of \$740.87 for the time the tenant was in occupation of the rental unit from March 1 to 7, 2018. This figure is based on the monthly rent of \$3,281.00 divided by the number of days in March.

The question of unpaid rent for February 2018 can only be determined based on a ruling regarding the validity of the landlord's various notices to end tenancy.

The landlord issued a 10 Day Notice to the tenant on December 22, 2017, along with a demand letter because of an unpaid gas utility in the amount of \$9,307.48. After closely reviewing all of the evidence submitted by both parties and considering the submissions

of counsel for the landlord, I find that the landlord's 10 Day Notice is not valid. I find this December 22, 2017 Notice is invalid because the information provided to the hearing shows that the 10 Day Notice and the Demand Letter for payment were issued to the tenant on the same day. Section 46(6)(b) of the *Act* states:

*If a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days **after** the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.*

The landlord could not issue the 10 Day Notice to End Tenancy 30 days until after the issuance of a demand letter sent to the tenant on December 22, 2017. I therefore find that this tenancy ended by way of the 2 Month Notice served to the tenant on November 28, 2017.

A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I find that the tenant was entitled to "free" rent for January 2018, but inadvertently paid the entire rent for this month. As noted above, per the terms of section 51 of the *Act*, the tenant is entitled to receive "an amount that is equivalent of one month's rent payable under the tenancy agreement." I therefore find that while rent was due for February 2018, the tenant was not afforded her right to "free rent" in January 2018 and is entitled to the equivalent of one month's rent to be set against rent for February 2018. The landlord is therefore not entitled to a monetary award related to unpaid rent for February 2018.

In addition to the issues surrounding unpaid rent, the landlord's application for a monetary award centered on a large bill for \$13,066.60 from the gas company. This bill represented an unpaid gas utility over six years. There is little evidence that either the landlord or the tenant were aware that this bill existed or was growing over time. There is no indication that statements prior to the one received in August 2017 were ignored by the tenant and conflicting testimony was presented regarding the tenant's responsibilities under the tenancy agreement. The tenant argued that she had signed up for BC Hydro and was under the impression that her utilities were covered through this service while counsel for the landlord argued that the tenant should have known

she was responsible for the payment of the gas bill as heat and electricity were not included with rent.

After reviewing all of the evidence submitted by both parties, a copy of the tenancy agreement, and the addendum included with the tenancy agreement, and after having considered the oral submissions of both parties, and those of the witnesses who attended, I find it difficult to reconcile the tenant's argument that she did not know that electricity or heat were not included in the rent with the fact "gas" was not included as an item covered by the rent in the tenancy agreement.

The tenancy agreement produced in evidence clearly states that only water was included with monthly rent. Furthermore, there is much evidence that the tenant displayed a great knowledge of her rights under the *Act* as it related to the tenancy agreement. This knowledge is shown through the various interactions that she had with the landlord's agent throughout the course of the tenancy. There is a large volume of emails, arbitrations and other correspondence between the parties which shows that the tenant understood numerous aspects of what she could expect under the tenancy agreement, and I find it difficult to believe that the tenant did not know what was, and was not included with her rent. In addition, the tenant conceded at the hearing that *some* amount was due for gas, she simply did not agree with the amount sought by the landlord. While I understand the tenant's frustrations related to a bill that accumulated over the years, the landlord is simply trying to recoup losses he had incurred as a result of the tenant's gas usage throughout the tenancy. These losses are documented through the relevant accounts of funds deemed outstanding by the utility company. For these reasons, I allow the landlord to recover the entire amount of sought for the outstanding gas bill.

As the landlord was successful in his application, he may recover the \$100.00. While the landlord has not applied to do so, the landlord may retain both from the tenant's pet and security deposit as partial relief for the monetary award.

Analysis – Tenant's Monetary Award

The tenant has applied for a monetary award of \$23,000.00. No specific breakdown of this figure was provided to the hearing and the tenant said she was seeking this amount because of loss of quiet enjoyment, for the inconveniences she experienced while the landlord was showing the home for sale, because of repairs which were required in the home and due to overall difficulties she had on the property.

Following lengthy submissions, the tenant confirmed that she was also seeking compensation at the British Columbia Supreme Court ("BCSC") because of her experiences at the property.

Section 58 of the *Act* states the following, in part:

(2) Except as provided in subsection (4), if the director receives an application under subsection (1), the director must determine the dispute unless...

(c) the dispute is linked substantially to a matter that is before the Supreme Court.

(4) The Supreme Court may

(a) on application, hear a dispute referred to in subsection (2) (a) or (c), and

(b) on hearing the dispute, make any order that the director may make under this Act.

It is clear that the application of the tenant pertains to the same matter that is before the BCSC. This application before the Court involves both parties, and is substantially linked to alleged loss as a result the tenant's experiences on the property in question. A determination has yet to be made on this matter and the tenant did not provide a breakdown of her figure of \$23,000.00 for which she is seeking compensation at the RTB. As such, I find that the application of the tenant is linked substantially to a matter that is currently before the BCSC, as contemplated section 58(2)(c) of the *Act* and I therefore exercise discretion not to make a determination on the dispute before me.

Conclusion

I issue a Monetary Order of \$7,148.32 in favour of the landlord as follows:

Item	Amount
Unpaid Utility Bill	\$9,307.48
Overholding in Rental Unit	740.87
Recovery of Filing Fee	100.00
Less Pet Deposit	(-1,500.00)
Less Security Deposit	(-1,500.00)
Total =	\$7,148.32

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for a monetary award is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 23, 2018

Residential Tenancy Branch