



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDL, MNRL, OPU, FFL

Introduction

On May 11, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a 10-day Notice to End Tenancy for Unpaid Utilities, dated May 6, 2018 (the “Notice”), and to be compensated for the cost of the Filing Fee.

On June 1, 2018, the Landlord submitted an Application for Dispute Resolution under the Act. The Landlord requested an Order of Possession for Unpaid Utilities, a Monetary Order to recover Unpaid Utilities, a Monetary Order for Damages and to be compensated for the cost of the Filing Fee. The Landlord’s Application was crossed with the Tenants’ Application and the matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord’s and the Tenants’ Applications were determined to contain similar issues and were scheduled to be heard on the same day. As part of the Landlord’s Application, he claimed damages to the rental unit and requested monetary compensation. In accordance with Rule 2.3 of the Residential Tenancy Branch – *Rules of Procedure*, I severed this part of the Landlord’s Application as it was not directly related to the joint issues of whether the tenancy was going to continue, nor was it related to the claim of unpaid utilities. I find that the Landlord’s claim for a Monetary Order for Damages is dismissed with leave to reapply.

Issues to be Decided

Tenants:

Should the Notice be cancelled?

Should the Tenants be reimbursed for the Filing Fee?

Landlord's:

Should the Landlord receive an Order of Possession for the rental unit?

Should the Landlord receive a Monetary Order for Unpaid Utilities?

Should the Landlord be reimbursed for the Filing Fee?

Background and Evidence

The Landlord and the Tenants agreed on the following terms of the tenancy:

The fixed tenancy began on November 10, 2015 and after one year, continued as a month-to-month tenancy. The rent is currently \$1,866.50 a month and is due on the fifteenth day of each month. The Landlord collected a security deposit and a pet damage deposit of \$900.00 each and currently holds those deposits.

As part of the original Tenancy Agreement, an addendum was added and Term #4 states:

Based on past experience the electric usage is set to \$295.00 and the water usage to \$40.00 per month for the whole property. It is agreed that if the amount of these utilities goes beyond the above limit, the tenant will pay 65% of the excess. (Reproduced as written)

The Tenancy Agreement and the addendum were signed by the Landlord and both Tenants on November 13, 2015.

Landlord Evidence:

The Landlord testified that he received a payment for excess electricity charges from the Tenants on June 29, 2016 in the amount of \$640.00. The Landlord stated that the Tenants have failed to pay their share of the excess electricity charges since October 19, 2016 and failed to pay their share of the excess water charges since February 13, 2016.

The Landlord referred to a submitted letter dated August 1, 2017, that summarized previous discussions with and concerns of the Tenants with regards to fair distribution of utility expenses. In that letter, the Landlord adjusted the past responsibility for the Tenants to pay 65% and reduced it to 50% of the excess electrical bill. In that same letter, the Landlord advised the Tenants that they are past due for two water bills in the amount of \$111.35 and the excess electrical cost between October 19, 2016 to June 19, 2017, in the amount of \$1,065.40. For a total of \$1,176.75 in outstanding utility charges.

The Landlord testified that, when he received a BC Hydro Utility bill, that he would pay it in full and then provide the Tenants a photocopy of the bill and a note requesting their portion of any excess electrical costs.

The Landlord submitted a 30-Day Written Demand to Pay Utilities, dated April 5, 2018, (the "Written Demand Letter") as evidence. The Landlord testified that the letter was hand delivered and witnessed as served on Tenant DS on April 5, 2018. The letter referenced the terms of the Tenancy Agreement, the

August 1, 2017 letter and further outlined the previous dates of written communications made by the Landlord to the Tenants to resolve the issue of unpaid utilities as follows: June 27, 2016; April 15, 2017; August 15, 2017; and September 14, 2017. The Landlord advised the Tenants that the outstanding amount for unpaid utilities was \$2,387.00 and that payment in the full amount was required within 30 days.

The Landlord did not receive payment from the Tenants and therefore, hand delivered the 10-Day Notice to End Tenancy for Unpaid Utilities to the Tenants on May 6, 2018. The Notice stated that the Tenants failed to pay the utilities in the amount of \$2,387.00 following written demand on April 5, 2018. The Notice included a vacate date of May 16, 2018.

The Landlord submitted a graph as part of his evidence package that set out the BC Hydro Billing Period, Bill Amount, Excess Amount at 50% and the Tenants' Amount for October 19, 2016 to April 19, 2018. The total outstanding BC Hydro bill for the Tenants is \$2,483.77. The Landlord did the same for the Water Excess Charges from February 13, 2016 to December 15, 2017, with a total for the Tenants of \$307.11. The Landlord also supplied copies of the relevant BC Hydro and Waterworks bills.

The Tenants are still living in the rental unit, have not paid any of the outstanding utility bills and therefore, the Landlord is requesting an Order of Possession for the rental unit and a Monetary Order for the amount of the outstanding utility expenses as of April 19, 2018, in the amount of \$2,790.88.

Tenants Evidence:

Tenant DS testified that the Tenants and the Landlord have had several arbitrated issues during the tenancy and are currently awaiting the results of a recent Dispute Resolution hearing.

Tenant DS stated that he and the Landlord had ongoing communications about the sharing of the utilities and how the Tenants heated their rental unit with propane; therefore, should not have as high of hydro costs. Tenant DS stated that he asked the Landlord for a history of electrical bills to justify the costs that were being charged to the Tenants; however, only sporadically received them.

Tenant DS acknowledged that the Tenants received the August 1, 2017 amendment letter to adjust their responsibility of excess electrical from 65% to 50%; however, felt that the Landlord should be applying the 50% to the outstanding electrical bills from one year earlier, as that was when the Tenants first brought up their concerns.

Tenant DS agreed that the Tenants have not paid any utilities bills since 2016 and stated that it was because the Landlord has not properly accounted for the claimed amounts. Further, Tenant DS stated that there are some repairs that the Landlord has not completed and the Tenants are waiting for an arbitrated decision before paying the Landlord for any outstanding utilities.

Tenant DS stated that he never received the Written Demand Letter until he received the Landlord's evidence package in relation to this hearing. Although the Tenants acknowledged receiving the evidence packages from the Landlord and the enclosed utility bills and graph stating what the Tenants owed, Tenant DS stated that they (the Tenants) still did not know what they owed. Tenant DS stated that he didn't have a problem paying the outstanding utility bills, he just wanted proof of what he owed.

Tenant DS acknowledged receiving the Notice and in response, the Tenants applied for Dispute Resolution.

Analysis

Section 46(1) of the Act authorizes a Landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the Tenant receives the notice. Section 46(6) of the Act states that 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 to end tenancy under this Section.

I accept the testimony of the Landlord and the Tenants that the Tenants, as a part of their Tenancy Agreement and as a consensual amendment to the Tenancy Agreement, dated August 1, 2017, were required to pay 50% of the excess electrical bill. I also accept that the Tenants were required to pay 65% of the excess water bill. As a result, I find that the Tenancy Agreement required the Tenants to pay utility charges to the Landlord.

I accept the Landlord's testimony and evidence that the Tenants were personally served a Written Demand Letter for payment of the unpaid utilities on April 5, 2018. The Landlord also provided testimony that there had been several times where he had provided written communications to the Tenants about the unpaid utility bills. The Landlord submitted a copy of the Written Demand Letter and a copy of the Proof of Service. I find that the Tenants were served a Written Demand Letter on April 5, 2018.

I accept the undisputed testimony that the Tenants have not paid any utility bills since October 19, 2016. I find that the unpaid utility charges may be treated as unpaid rent and that the Notice that the Landlord provided to the Tenants on May 6, 2018, is valid and enforceable.

Regarding the Tenants' Application, I find that the Notice should not be canceled and the Tenants should not be reimbursed for the Filing Fee as their claim was unsuccessful. I find that the Tenant's Application is dismissed without leave to reapply.

Regarding the Landlord's Application and because of the Tenants not paying the outstanding utilities bill and still occupying the rental unit beyond the vacate date, I find the Landlord should be issued an Order of Possession for the rental unit in accordance with Section 55 of the Act.

I find that the Landlord's Application has merit and the Landlord should be reimbursed for the Filing Fee in the amount of \$100.00.

I find that the Landlord has established a monetary claim in the amount of \$2,890.88, which includes \$2,790.88 for unpaid utilities and the \$100.00 in compensation for the Filing Fee for this Application for Dispute Resolution.

Conclusion

I am dismissing the Tenants' Application without leave to reapply.

I am granting the Landlord an Order of Possession to be effective two days after notice is served on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord has established a monetary claim, in the amount of \$2,890.88. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenants' security deposit of \$1800.00, in partial satisfaction of the monetary claim.

Based on these determinations, and in accordance with Section 67 of the Act, I grant the Landlord a Monetary Order for the balance of \$1,090.88. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court. 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: June 25, 2018

Residential Tenancy Branch