



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, PSF

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and for an order for the Landlord to provide services or facilities as required by the tenancy agreement or law.

The Tenant and Landlord were both present for the teleconference hearing. The parties were affirmed to be truthful in their testimony. Although both parties stated that they did not have anyone else with them, comments were heard from another person who was present with the Landlord. After some discussion, the Landlord provided the name of the person who was present. Only the Tenant and Landlord provided testimony.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence as delivered to him in person. The Tenant confirmed receipt of a copy of the Landlord’s evidence as posted on her door.

Preliminary Matters

Both parties agreed that they would like resolution to the issue of BC Hydro utility payments for the Tenant. Therefore, although neither party filed an application regarding utility payments, the parties were offered the opportunity to discuss a possible settlement agreement. The parties were able to reach an agreement regarding utility payments which will be outlined below.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to provide services or facilities as required by the tenancy agreement or *Act*?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on October 15, 2018. Rent in the amount of \$700.00 is due on the first day of each month. No security deposit was paid.

The Landlord served the Tenant with a One Month Notice on February 23, 2019 by posting the notice on the Tenant's door. The One Month Notice was submitted as evidence and states the following as the reason for ending the tenancy:

Failure to pay utilities. BC Hydro. Oct 15, 2018 till February 28, 2019 amount due yet to be determined.

The Landlord stated that no amount has been paid towards the BC Hydro bill since the start of the tenancy. He also stated that he wants the rental unit for his own use and therefore the tenancy needs to end. The effective end of tenancy date of the One Month Notice was stated as March 31, 2019.

The Tenant stated that she has not received a copy of the utility bills and also stated that there is a disagreement between the parties as to the amount agreed upon for utilities. The Tenant submitted that she is willing to pay her portion of the BC Hydro bills but needs to know what her portion is.

The Tenant also applied for an Order for services or facilities to be provided. She stated that there is a wood stove in the rental unit that has been disconnected causing a heating issue. She noted that this is not currently a problem as it is spring but will become an issue again in the winter. She stated that there is electric baseboard heating

which is not currently connected and that the Landlord has also provided portable electric heaters. The Tenant submitted a photo of the woodstove into evidence.

The Landlord testified that he disconnected the woodstove due to a requirement from the insurance company. He submitted a letter dated March 26, 2019 which states that the Landlord was provided 30 days from January 25, 2019 to either have the woodstove certified or to disconnect it.

The Landlord stated that the rental unit has electric baseboard heating but agreed that they are not currently connected. The Landlord stated that he provided electric space heaters to the Tenant of which he provided photos. The photos note that one heater provides heat for up to 400 sqft and the other heater up to 600 sqft. The Landlord stated that he has plans to fix the electric baseboard heating but has not had access to the rental unit to do so.

The Tenant stated that she has not received any written notice to enter the rental unit.

Settlement Agreement

As the parties indicated their desire to resolve the dispute over the utility payments, they were offered the opportunity to reach a settlement agreement, pursuant to Section 63 of the *Act*. The parties reached the following terms:

1. The Landlord will provide the Tenant with copies of the BC Hydro bills beginning in December 2018 and up to the current date.
2. The Landlord will continue to provide the Tenant with copies of the BC Hydro bills as they are received.
3. The Tenant agrees to pay one half of each of the BC Hydro bills for the residential property.
4. The Tenant will pay the money owing for the BC Hydro bills to the Landlord within 30 days of receipt of a copy of the bill.

The parties both confirmed that they were entering into the settlement agreement voluntarily and free from any pressure. They also confirmed their understanding that a settlement agreement is final and binding.

Analysis

The Landlord served the Tenant with a One Month Notice on February 23, 2019 and the Tenant applied to dispute the notice on March 7, 2019. As stated in Section 47(4) of the *Act*, a tenant has 10 days in which to dispute a One Month Notice. As the notice was posted on the Tenant's door on February 23, 2019, I refer to the deeming provisions of Section 90 of the *Act* which state that service by this method is deemed served 3 days after posting. As such, I find that the Tenant was deemed to have received the notice on February 26, 2019 and she applied to dispute the notice 9 days later on March 7, 2019. Therefore, as the Tenant applied on time, the issue is whether the reason for the notice is valid.

As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to dispute a One Month Notice, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

Section 47 of the *Act* outlines the reasons that a landlord may serve a tenant with a One Month Notice. While the Landlord testified as to the Tenant's failure to pay the utility bills as the reason for the One Month Notice, I fail to find this as a cause stated under Section 47 of the *Act*. As such, I do not find that this notice is valid as Section 47 does not allow for a One Month Notice to be served due to failure to pay utilities. Therefore, the One Month Notice dated February 23, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As for the Tenant's request for services to be provided, she stated that the heating issues are not currently a concern. However, the Landlord also stated his plans to fix the heating issues by the time the weather becomes colder again. I find it reasonable that the Landlord has provided alternative heating in the meantime through electric space heaters. I accept the Landlord's testimony that he has plans to fix the electric baseboard heating and therefore find that no orders are necessary at this time. Although the Landlord stated that he did not have access to the rental unit to conduct the repairs, I remind the Landlord that he may provide notice to enter in accordance with Section 29 of the *Act*.

Should the Landlord not follow through with plans to fix the heating within a reasonable timeframe, and prior to a change in weather, the Tenant is at liberty to file a new Application for Dispute Resolution. Therefore, the Tenant's claim for the Landlord to provide services or facilities is dismissed, with leave to reapply.

Conclusion

The One Month Notice dated February 23, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Tenant's application for the Landlord to provide services or facilities is dismissed, with leave to reapply.

The parties are ordered to follow the terms of the settlement agreement as outlined above.

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 1, 2019

Residential Tenancy Branch