



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNRL; CNR, CNL, MNDCT

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, utilities, and for landlord's use of property, pursuant to section 55; and
- a monetary order for unpaid rent and utilities, pursuant to section 67.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 31, 2019 ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated May 31, 2019 ("2 Month Notice"), pursuant to section 49; and
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67.

The landlord and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The female tenant did not testify at this hearing and the male tenant ("tenant") confirmed that he had permission to speak on the female tenant's behalf. The landlord intended to call her daughter as a witness for the 2 Month Notice, so she was excluded from the outset of the hearing, but she was not required as both parties agreed to end this tenancy. This hearing lasted approximately 42 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenants were in receipt of the landlord's 10 Day Notice and 2 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were duly served with the landlord's 10 Day Notice and 2 Month Notice.

Preliminary Issue – Amendment of both Parties' Applications

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include half a month's rent for August 2019 of \$500.00. I find that the tenants are aware that rent is due as per their tenancy agreement. The tenants continue to reside in the rental unit, despite the fact that a 10 Day Notice and 2 Month Notice required them to vacate earlier, including for failure to pay the full rent due. Therefore, the tenants should have known that by failing to pay their full rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claim for increased rent, even though the landlord did not include this in her amendment to her application.

The tenants sought to amend their application to add a monetary claim for storage fees reimbursement. The tenant initially stated that this was not related to the tenancy and was not within the RTB's jurisdiction. The tenant then maintained that he wanted to ask for these fees because the landlord asked to amend her application to add August 2019 unpaid rent. I find that the tenants did not apply for this claim when they originally filed their application or when they amended it. I find that this claim is not related to the tenants' original monetary claim for reimbursement of utilities and the landlord did not have notice of this claim. Therefore, I notified the tenants that they could not amend their application to add this claim at this hearing.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the conference, the tenant interrupted me, argued with me, yelled at me, and used profane language. I cautioned the tenant multiple times to stop this behaviour and allow me to speak. When I told the tenant that he could be removed from the conference, he said “whatever, I don’t give a shit.”

The hearing took longer because of the disruptive behaviour of the tenant. Despite the tenant’s behaviour, I allowed him to attend the full hearing, in order to provide him with a full opportunity to present the tenants’ application and to respond to the landlord’s application.

I caution the tenant to not engage in the same inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and he may be excluded from future hearings. In that event, a decision will be made in the absence of the tenant.

Preliminary Issue – Adjournment Request by Tenants

At the outset of the hearing, the tenant confirmed that he was ready to proceed with the hearing. He then requested an adjournment. He claimed that he did not have a chance to submit all of his evidence for this hearing because he was sick and the provincial government takes a long time to provide documents regarding fraud, after he requested them on July 10 or 12, 2019.

The landlord opposed the tenants’ adjournment request. She claimed that she did not want to delay the proceeding any further and the tenants’ evidence regarding fraud was not relevant to this hearing.

During the hearing, I advised both parties that I was not granting an adjournment of this hearing. I did so after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party’s request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*

- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

The landlord filed her application on June 24, 2019 and the tenants filed their application on July 2, 2019.

I find that the tenants had ample time to request and produce evidence for this hearing. If the tenant was sick, the other female tenant or an agent could have requested the documents earlier and produced them. I find that a further delay in the hearing date would prejudice the landlord, who was ready to proceed with her application, produced evidence, and opposed the tenants' adjournment request. Further, this hearing involved urgent end of tenancy order of possession issues, rather than just monetary claims.

Settlement of End of Tenancy Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on August 18, 2018, by which time the tenants and any other occupants will have vacated the rental unit.

This particular comprises the full and final settlement of a portion of this dispute for both parties. Both parties understood and agreed to the above terms, free of any duress or coercion. The above terms are legal, final and binding and enforceable, which settles a portion of this dispute.

The parties were unable to settle their monetary applications and asked that I make a decision about them. Below are my findings.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Background and Evidence

Both parties agreed to the following facts. This month-to-month tenancy began on August 1, 2018. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. No security deposit was paid by the tenants. No written tenancy agreement was signed by the parties, only a verbal agreement was reached. The tenants continue to reside in the rental unit.

The landlord said that the tenants are responsible to pay for utilities in addition to rent each month and the tenants have been paying for utilities until they received the 2 Month Notice from the landlord. The tenant claimed that utilities were included in rent and that he only paid them to the landlord because she agreed to reimburse them to the tenants at a later date.

The landlord seeks unpaid June 2019 rent of \$1,000.00, half of August 2019 rent of \$500.00, and May 2 to June 28, 2019 unpaid utilities of \$198.79. The landlord confirmed that the tenants were entitled to one month's free rent compensation for July 2019 rent of \$1,000.00 as per the landlord's 2 Month Notice. The landlord stated that she was only seeking half a month's rent for August 2019, despite the fact that the tenants were vacating on August 18, 2019. The landlord confirmed that she was not seeking unpaid utilities of \$465.56 for March 1 to May 1, 2019, nor was she seeking the other half of unpaid utilities of \$198.79 from May 2 to June 28, 2019, as per a written agreement between the parties.

The tenants dispute the landlord's monetary claim. The tenant claimed that June rent was paid on June 5, 2019 by e-transfer. The landlord agreed that she received this payment of \$1,000.00 but claimed that it was for May 2019 rent because that was unpaid. The tenant agreed that no rent was paid for May 2019 because the landlord was required to reimburse the tenants for utilities far exceeding the rent of \$1,000.00.

The tenants provided a copy of a written agreement, signed by the landlord. The landlord did not provide a copy of this agreement, which she says was signed by the tenants. The tenant said that he did not sign the agreement, but the first part of it, from paragraphs 1(a) to (c), were enforceable. The landlord agreed to reduced utilities amounts based on this agreement but claimed that June 2019 rent was still payable because the tenants only paid May rent on June 5, 2019.

The tenants seek \$1,879.93 for a reimbursement of utilities paid from August 1, 2018 to March 31, 2019. The tenants did not provide a breakdown for this amount, nor did they supply the utility bills or confirmation of payment to the landlord. The tenant said that the landlord provided the bills and he did not have enough time to submit evidence because he was sick. The tenant maintained that the tenants were not required to pay utilities for this tenancy, they only did so as a favour to the landlord because she was going through divorces and agreed to pay them back, and the tenant previously dated her so they were friends. The tenant said that is why no 10 Day Notice was given for unpaid utilities until May 31, 2019, when the tenant informed the landlord that she filled initial notice out incorrectly. The landlord disputes the tenants' monetary claim, indicating that the tenants were required to pay utilities in addition to rent, for this tenancy.

Analysis

Section 26 of the *Act* requires tenants to pay rent when it is due under a tenancy agreement. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I find that the tenants owe rent of \$1,000.00 to the landlord for June 2019 and \$500.00 for August 2019. I find that the tenants failed to pay this rent, as per their own admission that they only made one rent payment on June 5, 2019, and that they did not pay May 2019 rent because the landlord owed them for utilities. The tenants also did not pay any rent for August 2019, despite the fact that they are still living there as of August 15 and are not planning to vacate until August 18, 2019. I find that the tenants are required to pay their rent, regardless of whether utilities or other amounts are owed by the landlord, unless they have an order from an Arbitrator or emergency repairs are deducted as per section 33 of the *Act*, which both do not apply in this case. Pursuant to

section 67 of the *Act*, I award the landlord \$1,500.00 total in unpaid rent for June and August 2019.

I award the landlord \$198.79 for unpaid utilities from May 2 to June 28, 2019. The landlord provided a bill in the amount of \$397.58 with her application and claimed for only half, as per her written agreement with the tenants. I find that the tenants are obligated to pay utilities in addition to their rent. Although the parties do not have a written tenancy agreement, they have a verbal tenancy agreement. I find that the tenants' actions of paying the utilities for the entire tenancy of almost one year, demonstrate that they owe utilities, in addition to rent, to the landlord. I also find that the tenants failed to provide documentary or witness evidence to show that the landlord agreed to reimburse these utilities to the tenants at the end of the tenancy, as this is not indicated in the parties' agreement supplied by the tenants.

Therefore, I find that the tenants are not entitled to a reimbursement of any utilities for this tenancy and I dismiss their claim for \$1,879.93, without leave to reapply.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenants and any other occupants fail to vacate the rental premises by 1:00 p.m. on August 18, 2019. The tenants must be served with this Order in the event that the tenants and any other occupants fail to vacate the rental premises by 1:00 p.m. on August 18, 2019. 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.

I issue a monetary Order in the landlord's favour in the amount of \$1,698.79. Should the tenants 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 landlord's 10 Day Notice, dated May 31, 2019, is cancelled and of no force or effect.

The landlord's 2 Month Notice, dated May 31, 2019, is in full force and effect, as the tenants are moving out and they received one month free rent compensation pursuant to the notice.

The remainder of the tenants' application is dismissed without 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: August 15, 2019

Residential Tenancy Branch