



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPU, MNDCL, FFL**

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid utilities and a Monetary Order for unpaid utilities.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of hearing materials. The landlords submitted that the tenant was in jail when the hearing package had to be served so they gave it to a woman who appeared to be residing in the rental unit on March 25, 2021. The tenant confirmed that this woman gave him the hearing package although the tenant denied the woman was residing at the rental unit. Rather, the tenant described this woman as coming and going for a few days at a time to check on his children who were residing at the property while he was away. The tenant confirmed that he had sufficient opportunity to review the hearing documents prior to this hearing and that he intended to provide his position orally during the hearing. Having been satisfied the tenant was in receipt of the hearing package and had sufficient time to review the materials, I deemed the tenant sufficiently served pursuant to authority afforded me under section 71 of the Act.

I proceeded to explain the hearing process to the parties. The parties were affirmed and confirmed they were not recording the proceeding.

Upon review of the landlords' Application for Dispute Resolution, I noted the landlords had requested an Order of Possession on two grounds: because the tenant had given a notice to end tenancy and because the landlords had issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 9, 2021. I noted that I was not in receipt

of a tenant's notice to end tenancy to which the landlords confirmed that they requested this remedy in error in completing the Application for Dispute Resolution. The landlords clarified that they are seeking an Order of Possession based on the 10 Day Notice dated March 9, 2021. The tenant confirmed that he understood the landlords were seeking to end the tenancy due to unpaid utilities. I amended the Application for Dispute Resolution accordingly.

It should be noted that the landlord and the tenant also have a familial relationship of parents and son. During the approximately 75 minute hearing the tenant had to be cautioned a number of times to not interrupt the proceeding and to refrain from making statements concerning the tenant's childhood, allegations of substance abuse, and abuse to animals. The tenant was instructed to limit his submissions to those relevant to the tenancy and his obligation to pay rent and utilities. The tenant failed to follow my instructions and for a period of time I had to mute his telephone line. The tenant was able to hear the proceedings while he was muted and then I unmuted his telephone line when it was time for him to respond.

Finally, both parties referred to previous dispute resolution proceedings and I have recorded the file numbers on the cover page of this decision.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid utilities, as requested?
2. Are the landlords entitled to a Monetary Order for unpaid utilities?
3. Award of the filing fee.

Background and Evidence

The landlords are the owners of the house and occupy the main living unit of the house. Their son, the tenant, began renting the basement suite in the house under an oral tenancy agreement that started in December 2014.

The parties were in dispute as to the amount of the monthly rent; however, both parties provided consistent statements that the rent is payable on the first day of every month. The parties also provided consistent statements that there is a separate hydro meter for the basement suite and the tenant is required to pay for the hydro used in the basement suite. It was also undisputed that for the relevant period, up until December 31, 2020, the hydro account for the basement suite was in the name of the landlords and the

tenant was required to repay the landlords for the hydro used in the suite. Starting January 1, 2021, the hydro account was transferred into the tenant's name.

On January 14, 2021 the parties participated in a previous dispute resolution proceeding. On January 17, 2021, the Arbitrator awarded the landlords a Monetary Order to recover unpaid rent for the months of September 2020 through January 2021 in the amount of \$976.00 per month and unpaid utilities for hydro bills issued to the landlords up to and including the month of December 2020.

After the hydro account was transferred to the tenant's name, BC Hydro issued a final hydro bill to the landlords for the basement suite on January 5, 2021. It included charges for hydro consumed for the stub period of December 25, 2020 through December 31, 2020 and charges because the account had been on an equal payment plan which was cancelled, plus applicable taxes. The new hydro charges on the January 5, 2021 bill to \$355.54. The landlords provided their bank statement to show they paid \$355.54 on January 13, 2021 to settle the hydro account.

On February 6, 2021 the landlords issued a written demand to the tenant for payment of utilities in the amount of \$355.54 and attached a copy of the hydro bill. The landlords testified that the written demand was taped to the sliding glass door of the rental unit on February 6, 2021 in the presence of a witness.

The landlords submitted the tenant did not pay them for the utilities demanded and on March 9, 2021 they served the tenant with a 10 Day Notice to End tenancy for Unpaid Rent or Utilities ("10 Day Notice") indicating \$355.54 in utilities was unpaid and an effective date of March 15, 2021. The 10 Day Notice was taped to the sliding glass door of the rental unit in the presence of a witness on March 9, 2021. The tenant did not pay the outstanding utilities or dispute the 10 Day Notice after the 10 Day Notice was posted.

The landlords noted that the tenant continues to hold possession of the rental unit even though he does not currently stay at the rental unit due to a court order to stay away from the property; however, the tenant's child and his possessions are still in the rental unit.

By way of this application, the landlords seek an Oder of Possession and a Monetary Order to recover the unpaid utilities of \$355.54.

The tenant submitted that he had paid \$1100.00 to his mother and that the payment was supposed to take care of rent and utilities. When asked when he made this payment the tenant was uncertain and stated it was a long time ago. The landlord checked her records and stated that the tenant had actually paid her \$1125.00 but that was in July 2020 and the payment was for July 2020 rent of \$976.00 and that month's hydro payment. After hearing from the landlord, the tenant acknowledged that it was likely in July 2020 that he made the approximately \$1100.00 payment.

The tenant was of the position his parents/landlords are retaliating against him because he got sober and they continue to be alcoholics. The tenant also stated that their relationship deteriorated because he was growing marijuana in the garage and his parents did not approve of this even though the tenant requires the marijuana medically and that the lights did not consume much electricity. The marijuana growing was dismantled by his parents last spring and after that the tenant started staying in the "bush" much of the time last summer. Then, in October 2020 the tenant had a "no contact" order issued against him due to an incident with his parents and he has a court date set for May 2021. The tenant asserted that because of the "no contact" order in place he would only come and go to the property, with the last time being March 17, 2021. The tenant stated that since last October 2020 the landlords have been posting numerous notices on his door trying to collect money from him and evict him.

The tenant indicated he did not recall receiving the written demand for utilities or the 10 Day Notice of March 9, 2021 although he did acknowledge that numerous notices were posted to his door, found on the ground, and on his vehicle.

The tenant acknowledged that he did not pay the landlords much for rent and utilities after July 2020 as he was of the position the landlords should not have dismantled his marijuana growing operation and restricted his access to the garage. The tenant is of the position the landlords are trying to extort money from him which is why he put the hydro account in his own name starting January 1, 2021. The tenant also stated that because of his parents dismantling his marijuana growing operation he now has to purchase marijuana.

The landlords responded that with the "no contact" order issued in October 2020 the tenant was permitted to reside in the rental unit but that he had to stay a certain distance away from them but on March 16, 2021 the tenant breached the conditions and was re-arrested. The updated "no contact" of March 17, 2021 order does not permit the tenant to be close enough to them to reside in the rental unit.

The landlords also responded that the tenant's use of the garage was not part of the tenancy agreement and they did not charge him for anything other than rent and hydro for the basement suite.

With respect to the several notices served to the tenant, the landlords submitted that sometimes the tenant would leave the notices on the door for a long time and other times he would rip them off and throw them on the ground himself. The landlords insisted they have properly served the tenant by securely taping the notices to the door.

The tenant asserted the landlords have already changed the locks to the rental unit. The landlords denied that to be accurate.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

It was undisputed by the parties that the monthly rent did not include hydro and the tenant is responsible for paying for the hydro bill for the rental unit. It was also undisputed that immediately prior to the tenant putting the hydro bill in his name it had been in the name of the landlords and the tenant had, up until July 2020, paid the landlords for the hydro bill for the rental unit.

A previous dispute resolution proceeding on January 14, 2021 resulted in a finding and award that the tenant owed the landlords for hydro up to and including the bill received in December 2020. The matter before me pertains to the charges on the BC Hydro bill for the rental unit received in January 2021. Upon review of the previous dispute resolution decision and the January 5, 2021 hydro bill, I am satisfied that charges of \$355.54 on the January 5, 2021 bill were not included in the previous dispute or Monetary Order issued on January 17, 2021.

The tenant asserted that he paid the landlords \$1100.00 in July 2020; however, I am not persuaded that payment satisfies all of the hydro bills up to and including the January 5, 2021 bill, as implied by the tenant. Rather, I find the landlord's explanation that the payment covered the month's rent and the current hydro charges at that time to be more likely.

The tenant took the position the landlords have acted unlawfully by restricting his right to the garage and dismantling his marijuana grow operation. The landlord's denied the

tenant had the right to use of the garage and to grow marijuana in the garage under the tenancy agreement. However, I find it is unnecessary for me to consider whether the tenant had the right to use of the garage under the tenancy agreement, as a landlord's violation of the Act, regulations or tenancy agreement, if there was a violation, does not automatically entitle a tenant to withhold amounts owed to the landlord for rent and/or utilities. In order for a tenant to obtain a legal right to withhold rent and/or utilities from a landlord the tenant would have to have authorization to do so first, from an Arbitrator, which the tenant does not have. Therefore, I find these submissions to be irrelevant to the matter before me.

Finally, the tenant attempted to raise personal issues as to the landlord's motivations for seeking money from him and ending the tenancy; however, their family discord is not relevant to the tenant's obligation to pay rent and/or utilities.

In light of all of the above, I find I am satisfied that the tenant owes the landlords \$355.54 for the last hydro bill for the rental unit that came in their name.

Where a tenant is required to pay the landlord for utilities, the landlord is to give the tenant a written demand and if payment is not made within 30 days the landlord may treat the unpaid utilities as unpaid rent and issue a 10 Day Notice to End Tenancy for Unpaid Rent, as provided under section 46(6) of the Act.

The landlords submit that they gave the tenant a written demand for utilities of \$355.54 on February 6, 2021 by posting it on his door. When the tenant failed to make the payment, the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 9, 2021 and posted the 10 Day Notice on the tenant's door. The landlords provided the names of the persons who observed service.

The tenant provided varying positions with respect to what has been posted to his door by the landlords including denial that he received the written demand and the 10 Day Notice on the door; but, also acknowledging that the landlords have posted numerous documents to his door all the time followed by taking a position that he should not have to pay the landlords any more for utilities after they locked him out of the garage and he views the landlords attempts to collect rent and utilities as extortion.

I find the landlord's consistent and clear submissions as to service of documents to the tenant's door to be more persuasive than the tenant's varying submissions. Therefore, I find on a balance of probabilities that the landlords posted the written demand on the tenant's door on February 6, 2021 and posted the 10 Day Notice on March 9, 2021.

It is undisputed that after posting the written demand and the 10 Day Notice the tenant did not pay the amount demanded and the tenant did not file to dispute the 10 day Notice.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or utilities to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding amount or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

Upon review of the 10 Day Notice provided as evidence, I find it is in the approved form and is duly completed. Since the tenant did not pay the utilities or file to dispute the 10 Day Notice, I find the tenancy ended 10 days after the 10 Day Notice was served. As of the date of this decision, the effective date of the 10 Day Notice has long since passed and I find the landlords entitled to an Order of Possession. I provide the landlords with an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I further find the landlord entitled to recover from the tenant the unpaid utilities of \$355.54. I also award the landlords recovery of the \$100.00 filing fee paid for this application. Therefore, the landlords are provided a Monetary Order to serve and enforce upon the tenant, in the sum of \$455.54, as requested.

Conclusion

The landlords are provided an Order of Possession effective two (2) days after service upon the tenant.

The landlords are provided a Monetary Order in the sum of \$455.54 to serve and enforce upon the tenant.

Dated: May 04, 2021