Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDCT, OLC, LRE, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to comply with the tenancy agreement and/or the *Residential Tenancy Act (Act*), for an Order prohibiting or setting limits on the Landlord's right to enter the rental unit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on January 11, 2022 the Dispute Resolution Package was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents.

The Tenant submitted evidence to the Residential Tenancy Branch in December of 2021 and February of 2022. The Tenant stated that he was not aware he was required to serve this evidence to the Landlord and, as such, he did not do so. As the evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

On February 15, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the door of the rental unit on February 07, 2022. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Is the Tenant required to pay utilities and, if not**,** is the Tenant entitled to recover utility charges paid?
Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?
Is there a need to issue an Order prohibiting or setting limits on the Landlord's right to enter the rental unit?
Is there a need to issue an Order requiring the Landlord to allow the Tenant to run electrical cord(s) into his room?

Background and Evidence:

The Agent for the Landlord and the Tenant agree that:

- This tenancy began on September 15, 2021;
- The Tenant has a private room in a residential complex where he shares common areas with other tenants;
- The parties signed a second tenancy agreement that became effective on March 01, 2021;
- The second tenancy agreement declared that rent would be $750.00 per month;
- The second tenancy agreement stipulates that hydro is included with the tenancy; and
- The second tenancy agreement does not require the Tenant to pay for hydro consumption.

The Agent for the Landlord stated that a copy of the tenancy agreement was not submitted in evidence by the Landlord.

The Tenant stated that in the summer of 2021 he verbally agreed to pay an additional $200.00 to $250.00 per month for hydro. He stated that this agreement was made because he understood he was consuming a large amount of hydro, it was contingent

on him continuing to use an unusual amount of hydro; that he did not continue to use an unusual amount of hydro; and that he should not, therefore, be required to pay additional money for hydro.

The Agent for the Landlord stated that he is not certain how much the Tenant agreed to pay for hydro. He stated that the agreement to pay for excessive hydro use was made between the Landlord and the Tenant and that they discussed that agreement by text message in the summer of 2021. He stated that the agreement was made because it was clear the Tenant was using an excessive amount of hydro.

In a text message submitted in evidence by the Landlord, which appears to have been sent in the summer of 2021, in which the Tenant wrote that he is willing to pay an additional monthly payment for hydro. In a text message, dated July 01st, the Tenant declared, in part, that he not "mining rn so next bill will be way lower" and that if it is not he will pay "200 – 250 per month range" but he asks to see the amount of the bill. In this text message he clearly declares that he is willing to pay for his consumption.

The Landlord submitted a document dated October 28, 2021, which records a list of "missed hydro payments". At the bottom of this document there appears to be a counteroffer by the Tenant which declares that the Tenant will pay the balance of $1,826.27 and "continued consumption going forward" with the provision that the Tenant "may continue his operations". This document is signed by the Tenant.

The Landlord submits that the October 28, 2021 document is an agreement to pay for the amounts listed on the document and an agreement to pay for excessive hydro consumption. The Tenant stated that he understood this document to mean that he would pay the amounts listed on the document; that he could continue to consume hydro, even if it was excessive, and that the Landlord would prepare a contract establishing how he would compensate the Landlord for any unusual levels of consumption. The parties agree that no formal contract was entered into in regard to how the Landlord would be paid for consumption.

The Agent for the Landlord and the Tenant agree that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of this dispute was posted on the door of the rental unit on December 24, 2021.

The Agent for the Landlord and the Tenant agree that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declares the Tenant must vacate the rental unit by January 03, 2022 as the Tenant has failed to pay utility charges of $2,341.23. The

parties agree that rent was not due when this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served.

The Tenant is seeking to recover all of the payments he has made toward hydro consumption, in the amount of $2,150.00. The parties agree $2,150.00 was paid as follows:

- June 02, 2021 - $250.00
- July 02, 2021 - $150.00
- September 01, 2021 - $200.00
- October 01, 2021 - $150.00
- October 28, 2021 - $1,400.00

The Tenant submits that the above payments should be returned to him because they were made on the basis that he would be able to continue to use large amounts of hydro. He stated that since June of 2021 he had an extension cord running into his room from the exterior of the residential complex, which was unplugged by the Landlord on December 24, 2021. He stated that since June of 2021 he had an extension cord running into his room from the common area of the residential complex and that the cord is still running into his room but it was been unplugged in the common area by the Landlord on December 24, 2021. He stated that he relied on these cords to provide additional power to his unit for the purposes of mining bit coin.

The Agent for the Landlord agrees that the exterior extension cord has been removed and that there is still a cord running from the interior of the residential complex into the Tenant's private room.

The Tenant stated that he is seeking an Order requiring the Landlord to permit him to run extension cord(s) into his room to provide him with additional electrical outlets. He stated that there are not enough outlets in his room to operate his computer equipment.

The Agent for the Landlord stated that the Landlord does not wish to have electrical cords running into the rental unit because it contributes to excessive consumption of hydro.

The Tenant stated that the Landlord has entered his private room on multiple occasions for the purposes of taking photographs and he wants an Order requiring the Landlord to provide proper notice whenever the Landlord wishes to enter his rental unit.

The Agent for the Landlord stated that the Landlord has not entered the rental unit without proper authority and that the Landlord will not enter the unit without proper authority.

Analysis:

Section 13(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004. Section 13(2)(f)(vi) of the *Act* stipulates that a tenancy agreement must comply with any requirements prescribed in the regulations and must set out which services and facilities are included in the rent. Utilities are a service or facility, as that term is defined by section 1 of the *Act.*

On the basis of the undisputed evidence, I find that the Landlord complied with sections 13(1) and 13(2)(f)(vi) of the *Act*. I find that the Landlord and the Tenant signed a tenancy agreement that became effective on March 01, 2021, which required the Tenant to pay rent of $750.00 per month and that it specified hydro was included with the tenancy. As this tenancy agreement does not require the Tenant to pay for hydro consumption, I find that he is not obligated by the written agreement to pay for hydro consumption.

Section 14(2) of the *Act* stipulates that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. Section 14(3)(b) of the *Act* stipulates that the ability to amend a term of the tenancy agreement does not apply to the withdrawal/restriction of a service or facility. Withdrawal or restrictions of a service or facility, such as providing hydro with the tenancy, must occur in accordance with section 27 of the *Act.*

Section 27(1) of the *Act* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement. As the tenancy agreement declares that hydro is included with the tenancy and use of hydro is clearly essential to use of the rental unit as living accommodation, I find that the Landlord is not entitled to remove that “free” service from the tenancy.

Section 14(3)(a) of the *Act* stipulates that the ability to amend a term of the tenancy

agreement does not apply to a rent increase. A rent increase may only be imposed in accordance with Part 3 of the *Act*.

I find that requiring a tenant to pay for hydro consumption that was previously included with the tenancy constitutes a rent increase and must, therefore, comply with Part 3 of the *Act.*

Section 43(1) of the *Act* reads:

> 43 (1) A landlord may impose a rent increase only up to the amount
>
> (a) calculated in accordance with the regulations,
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> (b) ordered by the director on an application under subsection (3), or
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> (c) agreed to by the tenant in writing.

I find that the Landlord would be entitled to increase the rent to include hydro costs in most circumstances where hydro was included with the rent, pursuant to section 43(1) of the *Act*, only if the Tenant agreed to that increase in writing.

I find that the Landlord has failed to establish that the Tenant agreed to increase the rent to include hydro costs, in writing. I therefore cannot conclude that the Landlord had the right to charge the Tenant for hydro consumption during this tenancy.

While I accept that the Landlord and the Tenant discussed paying money towards hydro consumption by text message in the summer of 2021, I cannot conclude that the Tenant agreed to paying increased rent in those text messages. Rather, I find that he agreed to pay the Landlord for excessive hydro consumption in the "200 – 250 per month range" providing he was provided with copies of the hydro bill. I interpret this text message to mean that the Tenant was willing to pay money towards his hydro consumption based on proof of his consumption. I do not accept that this was an agreement to increase the amount of his monthly rent by any specific amount or percentage.

On the basis of the testimony of the Tenant and the document dated October 28, 2021, I find that the Tenant agreed to pay for hydro consumption, in the amount of $3,976.27. I find, however, that this agreement cannot be considered a written agreement to increase the rent, as it does not specify that rent will be increased by a specific amount.

I find that the October 28, 2021 document does not constitute a written agreement that requires the Tenant to pay a portion of the hydro costs, as it is simply too vague. It

does not specify that the Tenant will pay a particular monthly amount for hydro consumption nor does it establish the percentage of hydro consumption that must be paid. I therefore find that it does not constitute a written agreement to increase the rent to cover hydro costs.

As the Landlord has failed to establish that the Tenant agreed, in writing, to increase the rent to include any payment for hydro consumption, I find that the rent for this unit is currently $750.00, including utilities.

Section 46(1) of the *Act* permits 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.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door of the rental unit on December 24, 2021.

As the Agent for the Landlord and the Tenant agree that rent was not overdue on December 24, 2021, I find that the Landlord did not have the right to end this tenancy pursuant to section 46(1) of the *Act*.

Section 46(6) of the *Act* stipulates 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 under this section. As I have found that the tenancy agreement does not require the Tenant to pay utility charges to the Landlord, I find that the Landlord does not have the right to end this tenancy pursuant to section 46(6) of the *Act*.

As the Landlord does not have the right to end this tenancy pursuant to section 46 of the *Act*, I grant the Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

For the benefit of both parties, the parties should be aware that a landlord could, in certain circumstances, end a tenancy if a tenant continues to consume an unreasonable amount of hydro after the matter is brought to the attention of the tenant when those costs are borne by the landlord, pursuant to section 47(1)(d) of the *Act.* It is unlikely that a landlord would be able to establish grounds to end a tenancy in such

circumstances if a tenant made a reasonable effort to compensate for the landlord for excessive costs. This information is provided to the parties in an effort to provide guidance as this tenancy continues. This is not a matter to be determined at these proceedings, however, as the Landlord has not attempted to end the tenancy pursuant to section 47(1)(d) of the *Act*.

When hydro is provided as a term of a tenancy agreement, I find it reasonable and prudent for a tenant to agree to compensate a landlord when there has been an unusually high level of consumption. Providing this payment is made as compensation for unusually high levels of consumption and the payment cannot be considered a rent increase, there is nothing in the *Act* that would prevent the parties from reaching a settlement agreement in regard to consumption. Although the *Act* is silent about the issue of excessive hydro consumption, it is not unlike section 32(3) of the *Act* which requires tenants to pay compensation for physical damage to a rental unit.

On the basis of the undisputed evidence, I find that the Tenant paid the Landlord $2,150.00 in compensation for high levels of hydro consumption at various times in 2021. As the Tenant voluntarily paid these amounts, I cannot conclude that the Landlord breached the *Act* when the Landlord accepted those payments.

Section 67 of the *Act* authorizes me to order a landlord to pay money to a tenant if the tenant experiences a loss as a result of the landlord breaching the *Act*. As the Tenant has failed to establish that the Landlord breached the *Act* by accepting voluntary payments for high hydro consumption, I find the Tenant has failed to establish the right to the return of those payments. I therefore dismiss the Tenant's application to recover $2,150.00 in hydro payments.

In a further attempt to provide guidance to the parties as this tenancy continues, there is nothing in the *Act* that requires the Tenant to pay compensation for excessive hydro consumption. It would therefore be highly unlikely that the Landlord would be granted a monetary Order for hydro consumption in any amount. I specifically note that I will not be determining if the Tenant is required to pay the full $3,976.27 amount mentioned in the document dated October 28, 2021, as that matter is not before me.

In the event the Landlord believes the Tenant has not reasonably compensated the Landlord for excessive hydro consumption, the only option available to the Landlord would be to attempt to end the tenancy pursuant to section 47(d) of the *Act*. It would then be left to a Residential Tenancy Branch Arbitrator to determine if the Landlord has

been reasonably compensated and, if not, if the Landlord has grounds to end the tenancy pursuant to section 47(d) of the *Act*. Again, this is not a matter to be determined at these proceedings, as the Landlord has not attempted to end the tenancy pursuant to section 47(1)(d) of the *Act*.

I dismiss the Tenant's application for an Order requiring the Landlord to permit him to run extension cord(s) into his room to provide him with additional electrical outlets. The Tenant rented a rental unit with a finite number of electrical outlets and I can find no reason to conclude that he is entitled to additional outlets.

Regardless of whether the Landlord has entered the rental unit without proper authority in the past, I hereby Order the Landlord to strictly comply with section 29(1) of the *Act* whenever the Landlord wishes to enter or open the door of the rental unit. For the benefit of both parties section 29(1) of the *Act* reads:

> 29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
> (i) the purpose for entering, which must be reasonable;
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
> (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
> (d) the landlord has an order of the director authorizing the entry;
> (e) the tenant has abandoned the rental unit;
> (f) an emergency exists and the entry is necessary to protect life or property.

I find that the Tenant's Application for Dispute Resolution has some merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is set aside and has no force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The Tenants' application to recover hydro payments is dismissed, without leave to reapply.
The Landlord is obligated to comply with any Orders outlined in my Analysis.

The Tenant has established a monetary claim of $100.00 in compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Tenant does not wish to enforce this monetary Order through the Province of British Columbia Small Claims Court, the Tenant has the right to withhold this amount from rent due, pursuant to section 72(2) of the *Act*.

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

Dated: February 20, 2022

Residential Tenancy Branch