



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant June 06, 2022 (the “Application”). The Tenant applied as follows:

- For a repair order
- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 02, 2022 (the “June Notice”)
- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 16, 2022 (the “August Notice”)
- To recover the filing fee

The Tenant appeared at the hearing. An Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the June Notice, dispute of the August Notice and the request to recover the filing fee but dismiss the request for a repair order because it is not sufficiently related to the disputes of the June Notice and August Notice. The request for a repair order is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agent confirmed receipt of the hearing package. The Agent testified that they did not receive a letter submitted as evidence by the Tenant. The Tenant advised they did not serve the letter on the Landlord. Given this, I excluded the letter pursuant to rule 3.17 of the Rules because the Tenant did not comply with rule 3.14 of the Rules.

The Tenant testified that they received the Landlord's evidence October 15 and 16, 2022. The Agent testified that the evidence was sent October 12, 2022, by registered mail. Pursuant to section 90(a) of the *Act*, the Tenant would have been deemed to have received the Landlord's evidence October 17, 2022. I accept that the Tenant received the evidence October 15 or 16, 2022, three or four days prior to the hearing. The Landlord did not comply with rule 3.15 of the Rules in relation to the timing of service of their evidence. Given this, I told the Agent for the Landlord they were required to tell me specifically what documentary evidence they were relying on during the hearing. I told the Tenant to let me know if there was an issue with the evidence relied on by the Landlord during the hearing and we would deal with admission of the evidence at that point.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the June Notice be cancelled?
2. Should the August Notice be cancelled?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started September 01, 2020, and was for a fixed term ending August 31, 2021. Rent was \$1,470.00 per month due on or before the first day of each month. The Tenant paid a \$735.00 security deposit.

The issue between the parties is whether the Tenant is responsible for paying for electricity.

Term 3 of the tenancy agreement states:

The Tenant in addition to the Monthly Rental, agrees to pay the following services applicable to the Rental Premises, See clause 11, Utilities Payment.

Cable	(Specify Yes or No) Yes	Heat	(Specify Yes or No) No	Water	(Specify Yes or No) No
Electricity	Yes	Hot Water	No		
Garbage	No	Parking	Yes		

The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under section 27(2) of the Act.

Upon 30 days written notice, the landlord may change or remove services, if the method by which they are supplied to the landlord changes.

Term 11 of the tenancy agreement states:

11. UTILITIES PAYMENT: Utilities that are not included in the rent or are not paid to the Landlord are the responsibility of the tenant who must apply for hook up and must maintain current payment of the utility account. The discontinuation of utility service resulting from the tenant's cancellation or failure to maintain payment of his utility account is a breach of a material term of this Agreement. The Landlord has the right to end the tenancy if the tenant fails to correct the breach within a reasonable time after receiving written notice to do so. Any utility charges to be paid to the Landlord that remain unpaid more than 30 days after the tenant receives a written demand for payment will be treated as unpaid rent and the Landlord may issue a Notice to End Tenancy.

The Tenant testified that an agent for the Landlord told the Tenant they would not be responsible for paying for electricity when the Tenant first looked at the rental unit. The Tenant testified that they were never given a copy of the written tenancy agreement. The Tenant testified that they were not provided electricity bills for the first year and a half of the tenancy. The Tenant testified that they would not have rented the unit if they knew they had to pay for electricity.

The Agent for the Landlord did not know why the Tenant was not sent electricity bills for the first year and a half of the tenancy and said it may have been due to the pandemic that the Landlord did not issue the bills.

The June Notice and August Notice were submitted.

The June Notice states the Tenant failed to pay \$200.13 for utilities after a demand was issued April 28, 2022. The effective date of the June Notice is June 15, 2022.

The August Notice states the Tenant failed to pay \$1,492.05 in rent due July 01, 2022, and \$200.13 for utilities after a demand was issued August 10, 2022. The effective date of the August Notice is August 29, 2022.

The Tenant acknowledged receipt of the June Notice and August Notice. The Tenant could not recall when they received the June Notice and testified that they received the August Notice around August 16, 2022.

The Agent testified as follows. Invoices for electricity bills were sent to the Tenant and the Tenant did not pay these. Two demand letters were sent to the Tenant. The demand letter for \$151.42 owing for electricity was sent April 29, 2022. The demand letter for \$200.13 owing for electricity was sent July 07, 2022.

The Tenant acknowledged receipt of the demand letters April 29, 2022, and July 07, 2022. The Tenant did not dispute the amounts of the electricity bills. The Tenant maintained they do not owe for the electricity bills because they are not responsible for paying for electricity.

The parties agreed the Tenant did not make any payments towards electricity after the June Notice was issued.

In relation to the August Notice, the Agent confirmed the Tenant failed to pay July rent and outstanding utilities. The Agent agreed there was an issue with how the Tenant was paying rent because the Tenant wanted to pay by e-transfer; however, the Landlord cannot accept rent by e-transfer. The Agent referred to term 9 of the tenancy agreement which states:

9. **PAYMENT OF RENT:** The tenant must pay the rent on time via Pre-Authorized Payment (P.A.P.), unless the tenant is permitted under the Act to deduct from the rent. Banking information must be provided to the landlord upon completion of Lease Agreement. The obligation of the tenant under this Agreement and by law requires the rent to be paid on the first of every month. Should the payment fail due to no sufficient funds (NSF) or intentional stop payment, the tenant must pay the landlord via Interac (debit machine) or Money Order. The Landlord must give the tenant a receipt for rent paid in cash. If the rent is unpaid, the Landlord may issue a notice to end a tenancy to the tenant, which may take effect not earlier than 10 days after the date the tenant receives the notice.

The Tenant testified as follows. They sent the Landlord a letter by registered mail about the method with which they would pay rent. They stopped direct deposit of their rent. They told the Landlord they would pay rent by e-transfer. The Landlord did not tell the Tenant they could not pay rent by e-transfer. The Landlord sent the Tenant documentation showing they kept the security and pet damage deposit towards July rent and therefore the Tenant did not pay the outstanding rent.

The Agent for the Landlord testified that July rent is still outstanding and denied that the Landlord kept the security and pet damage deposit towards July rent.

I asked the Tenant to show me where in the documentary evidence it shows that the Landlord kept their security and pet damage deposits towards July rent. The Tenant could not point to documentary evidence showing this. The Tenant referred to the Statement of Account provided by the Landlord; however, this shows the Tenant paid the security and pet damage deposits in 2020, it does not show that the Landlord kept

the security and pet damage deposits towards July rent. The Tenant said perhaps they misunderstood the Statement of Account when they thought it showed the Landlord kept the security and pet damage deposits towards unpaid rent.

The parties agreed the Tenant did not pay July rent after being issued the August Notice.

The Agent testified that \$1,492.05 for July rent is currently outstanding as well as \$307.57 for utilities. The Tenant agreed July rent is outstanding and did not dispute the amount of utilities claimed by the Agent.

The Agent sought an Order of Possession effective one month after service on the Tenant.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent or utilities. The relevant portions of section 46 state:

46 (1) A landlord may 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.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution...

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) 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.

I am satisfied based on the written tenancy agreement that the Tenant owes for electricity because the agreement states this and the Tenant signed the agreement. I do not find discussions the Tenant had with agents of the Landlord prior to the Tenant signing the tenancy agreement relevant because any agreements should have been reflected in the tenancy agreement if the parties intended to be bound by them.

I do not find it relevant that the Tenant did not get a copy of the written tenancy agreement at the start of the tenancy. The point is that the Tenant signed the written tenancy agreement stating they are responsible for paying for electricity. Whether the Tenant received a copy of the tenancy agreement after they signed it does not change the terms of the tenancy agreement.

I acknowledge that the Landlord did not send the Tenant utility bills for electricity for a period at the start of the tenancy. I find the Landlord waived their right to collect utility payments for the period in which they did not send invoices or bills to the Tenant. However, the Landlord was entitled to rely on their right to collect payment for electricity pursuant to the tenancy agreement with notice to the Tenant, which I find the Landlord provided by way of Invoices and the two demand letters sent April 29, 2022, and July 07, 2022. I find the Tenant was required to pay for electricity once notified the Landlord was enforcing their right to collect payment for electricity pursuant to the tenancy agreement.

Given the above, the Tenant was required to pay \$151.42 for utilities pursuant to the demand letter sent April 29, 2022. The Tenant was also required to pay \$200.13 for utilities pursuant to the demand letter sent July 07, 2022.

I accept that the Tenant did not pay the \$200.13 owing for utilities after receiving the July 07, 2022, demand letter because the Tenant acknowledged they have not paid the Landlord for utilities. Given the Tenant did not pay the utilities, the Landlord was entitled to treat them as unpaid rent and issue the August Notice after August 06, 2022.

The Landlord issued the August Notice August 16, 2022, and the Tenant received it around this date.

Upon review of the August Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice around August 16, 2022, to pay the outstanding utilities or dispute the August Notice pursuant to section 46(4) of the *Act*.

I find the Tenant did not pay the outstanding utilities because the Tenant acknowledged this.

The Tenant filed the Application in June of 2022, and therefore I find the Tenant disputed the August Notice in time. However, the Tenant did not have a valid basis for disputing the August Notice. The Tenant's basis for disputing the August Notice was that the Tenant does not owe for electricity, and I have found the Tenant does owe for electricity. In the circumstances, the Tenant's dispute of the August Notice is dismissed.

Section 55 of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52...and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. I issue the Landlord an Order of Possession effective one month after service on the Tenant.

I accept that the Tenant currently owes \$1,492.05 for July rent and \$307.57 for utilities because the Tenant did not dispute this. I issue the Landlord a Monetary Order for \$1,799.62 pursuant to section 55(1.1) of the *Act*.

The Tenant is not entitled to recover the filing fee because they have not been successful in the Application.

Conclusion

The Landlord is issued an Order of Possession effective one month after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the BC Supreme Court as an order of that Court.

The Landlord is issued a Monetary Order in the amount of \$1,799.62. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the BC Provincial Court (Small Claims) 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 *Act*.

Dated: October 31, 2021

Residential Tenancy Branch