



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC 1328526 LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT, RP, OLC, RR, PSF, LRE

Introduction

This hearing was convened as a result of the Tenant's Applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") for:

- an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent;
- a Monetary Order of \$871.00 for damage or compensation under the Act;
- an Order for repairs to the unit or property;
- an Order for the Landlord to Comply with the Act or tenancy agreement;
- an Order to reduce the rent for repairs, services or facilities agreed upon, but not provided;
- an Order to provide services or facilities required by the tenancy agreement or law; and
- to suspend or restrict the Landlord's right to enter.

The Tenant and an agent for the Landlord, D.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

Two witnesses for the Agent, C.W. and S.C., were also present and initially available to provide affirmed testimony; the Agent had no way of contacting the witnesses when it was time for them to testify, therefore, they testified at the beginning, as we started on the subjects about which the Agent wanted them to testify. They were then excused from the hearing. This process ensured administrative fairness, as it prevented the Witnesses from being influenced by any other testimony in the hearing, pursuant to Rule 7.20 of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules").

During the hearing the Tenant and the Agent were given the opportunity to provide

their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Rules; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the onset of the hearing, the Tenant advised that she had moved out on May 31, 2022, and as such, most of her claims were no longer relevant. The Tenant's monetary claim remained relevant.

Further, I had to adjourn the first hearing, because the Agent had not received the Tenant's service of her Notices of Hearing by email, because the Agent had blocked the Tenant's email address.

Accordingly, I adjourned the hearing and Ordered the Tenant to re-serve the Agent with her Notices of Hearing documents and evidence, as it relates to the Tenant's monetary claim, which was the remaining relevant claim. I recommended the Tenant serve the Agent in person or via registered mail, as it was easier to track and prove.

At the reconvened hearing, the Agent said he had not received anything from the Tenant between hearings. The Tenant said she sent her documents by registered mail; however, she could not find the receipt and was unable to provide a tracking number for the mailing. I advised the Tenant that she was responsible for providing some proof of service, pursuant to Rule 3.5 which states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

As a result, I advised that I found it necessary to **dismiss the Tenant's applications wholly without leave to reapply** for failure to comply with the Rules regarding service of her Notices of Hearings and evidence.

We discussed whether the Landlord may still make claims connected to the Tenant's application to cancel the 10 Day Notice. I turn to section 55 (1.1) of the Act, which states that if a tenant applies to dispute a landlord's notice to end a tenancy, then the director must grant an Order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice;

As noted above, I have dismissed the Tenant's applications wholly, and therefore, we needed to determine if the Landlord's 10 Day Notice complied with section 52 of the Act. Further, the Landlord has the onus to prove his claims for unpaid rent and utilities on a balance of probabilities.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the 10 Day Notice compliant with section 52 of the Act?
- Is the Landlord entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 1, 2021, with a monthly rent of \$1,800.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$900.00, and no pet damage deposit.

The Tenant provided a copy of the 10 Day Notice, which was signed and dated March 2, 2022, and which had the rental unit address. The 10 Day Notice was served in person and by attaching a copy to the rental unit door on March 2, 2022, and it had an effective vacancy date of March 12, 2022. The ground for serving the 10 Day Notice was that the Tenant failed to pay the Landlord \$1,625.79 in utilities, following written demands for this dated January 10, 2022, and March 19, 2022.

In the hearing, the Agent said the Tenant owes the Landlord \$1,629.00 in electricity charges. The Agent asked the Witness, C.W., if he served anything to the Tenant on behalf of the Landlord. C.W. said that he and S.C. served unpaid [electricity] bills to the Tenant at the residential property on January 10, 2022, by posting it on the door. S.C. said that this claim was for \$788.81.

S.C. said that they also served the Tenant with another electricity bill the same way on March 19, 2022, and that the amount requested was \$840.91

The Tenant responded by saying:

They can't provide photo evidence, because not one time was I served properly. He had a power line - a 220 power line, with fridges and lights left on all the time. At one point, he dragged a line to another unit.

I never had anything put on my door, not once.

I asked the Agent if he had any other proof of the service of these bills, and he said:

There are the notices uploaded to the RTB. There is a first [electricity] bill December 20th for \$788.81 – that's what was put on door on January 10th. It said it's due by January 10th – see [electricity] bill at the [RTB] site.

The \$840.91 bill was issued on February 17, 2022, and there's a final disconnection notice without a date, consistent with March 19th posting on the door. I uploaded that, as well.

The Agent had, in fact, submitted these bills as set out above in his documentary evidence.

The Agent continued:

Another letter I submitted was posted on the door, which says she has to pay \$1,629.00 immediately and dated April 2, 2022. There should also be correspondence – letters we've written her about this bill.

There's supporting evidence to what she is claiming that she owes and doesn't owe. I've paid over \$800.00 of her [electricity] account to keep it running, when I didn't have any – the payment was made in good faith that she was to set up her

own account. I never intended that she would get free [electricity] or anything. She's living in the cabin with a family of four and using a large amount of [electricity].

The Tenant responded:

When he is speaking of notices posted on the door, he was speaking about eviction notices. He never posted bills or anything like that. I've seen only copies of eviction notices. [S.C.] was not with [C.W.] when they posted the notices. I have recorded conversations.

I asked the Tenant if she had paid for electricity or if the tenancy agreement required the Landlord to pay for her family's electricity usage. She said:

Yes, because they powered the water pump for the property. He had a 220 line. It's a small home. I didn't have any of my things. There was a TV, an oven, one computer, three baseboards. All that takes electricity.

I asked the Tenant who should pay for that electricity usage, and the Tenant responded by referring to the power cable she said the Agent had running through her property, which uses electricity that would be billed to her meter. "All the plugs run through the 220 line that came through to my power box."

I asked if the Tenant had a right to free electricity, and she said: "I offered to pay \$225.00 a month, but [the Agent] refused me to pay that amount." Based on the Tenant's testimony of having offered to pay for the electricity, I find that it was not included in the rent in the tenancy agreement (to a copy of which, neither Party directed me in their evidence).

The Agent replied:

She lived in a two-bedroom cabin, and there is a circuit going to a shop which there is no activity in. There is one water pump that runs the water system for the resort, so I can keep that water running. The cost to run the water pump is \$25.00 a month.

After she left - abandoned it on May 17 - from then on, the power was about \$25.00 a month, when cabin was vacant. I uploaded those to the site.

She claimed the decrepit water system was using extra power, so I had a professional company come in and evaluate the water system. They found no problem at all. The corroborating evidence shows how much it costs to run a half cycle pump.... After she abandoned the unit, the evidence supports that it was exactly \$25.00. I've had the cabin back in my possession since then, and I have used about \$300.00 of [electricity] since May to today.

The only power use through the cabin is for the water pump. Part of my claim is doing this. She never paid one penny to [electricity]. I refused to pay more of her power, which is way, way more than that water pump. I tried my best to provide that water pump with a generator system. I asked numerous times to pay her [electricity] bill, but it was so far in arrears and so much money, so I tried to run the water pump off a different system. I spent \$1,400.00 in buying a generator and run the shop and water pump off the generator.

The line she talks about is an emergency measure to ensure other occupants have power. Running an extension cord to my shop - when an inspector got there, he said there was no hazard.

I asked the Agent about the Tenant's offer to pay \$225.00 a month toward the electricity her family was using. The Agent said: "No, she never said she would offer to pay anything and she didn't pay anything. And she forwarded over 400 complaints."

The Tenant said:

Re the power line – it was to the other homes that had their own power, to avoid a loss of power? Since I have moved into a place over twice the size, I have paid \$140.00 in [electricity] for my units usage, for three months now. His claims that he had nothing and was never using the workshop is completely false. There are fridges in there, lights in there, security lights. Even dragging a power cable – see my communications with the regulatory authorities - there was a concern. Someone had to attend to pull the cable back, which happened the same day the inspector showed up.

The Agent said: "The power cord was never hooked up to anything. I used it to calculate the distance. It was done a few days before the power was going to be turned off for non-payment."

In answer to why the cable was left there, the Agent said:

It was only a matter of one day. It was not left there, and it was never hooked up. The inspector saw that it was never hooked up. I was trying to see if the cord was long enough. I installed a generator, instead, because the inspector said it was not a good way to hook up the other suite.

The Tenant replied:

It wasn't hooked up, because I called the regulatory authorities – they told him to pull it back and not connect it. There is no need to measure anything – no purpose to any form of measurement.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 (6) of the Act sets out that a landlord may consider unpaid utilities as unpaid rent, if the landlord has served the tenant with a written demand for payment of them, and if the utility charges are unpaid for more than 30 days after receipt of the written demand.

Further, Section 55 (1.1) states that if a tenant applies to dispute a landlord's notice to end a tenancy for unpaid rent, then the director must grant an order requiring the payment of the unpaid rent by the tenant, if the following circumstances apply:

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice;

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content. Further, I have dismissed the Tenant's application to cancel the 10 Day Notice. Accordingly, I find that the Landlord is eligible for a monetary order for unpaid rent pursuant to the Tenants' Application.

The Agent's evidence, supported by two Witnesses, is that the electricity bills were served to the Tenant by posting them on her door on January 10, 2022, and March 19,

2022, respectively. I, therefore, find that the Tenant was deemed served with these documents three days after they were posted on the door, pursuant to section 90 of the Act. I also find that the Tenant has had more than 30 days in each case to pay these bills, but that she has not done so.

The Tenant referred to a cable the Agent had run through the rental unit for what the Agent testified was one day; the Tenant did not disagree with this, as she said: "It wasn't hooked up, because I called the regulatory authorities – they told him to pull it back and not connect it." As such, I find that this action on the Agent's part did not affect the amount of electricity billed to the rental unit.

The Agent acknowledged that a water pump used by all the tenants was connected to the Tenant's electricity panel. The Agent estimated that it cost \$25.00 a month to run, which he confirmed when the Tenant moved out and this rental unit was vacant. As such, I find it reasonable to deduct this amount from the amount claimed by the Landlord. I find it is common knowledge that electricity bills are sent for two month periods, and therefore that I must deduct \$50.00 from each bill for the water pump usage by the Landlord.

When I consider the evidence before me, I find on a balance of probabilities that the Landlord's claim is valid, as I have found that electricity was not included in the tenancy agreement, as based on the Tenant's testimony, and that therefore, the Tenant was responsible for paying for the electricity used by her family in the rental unit.

The Tenant testified that the Agent only posted eviction notices on her door, and not notices of utilities owing; however, based on the Witnesses' testimony in the hearing, the Tenant's agreement that she owes money for electricity - having offered to pay \$225.00 per month - and the Agent's practice of serving her with documents on the door, I find the Agent's testimony in this regard is more reliable than that of the Tenant. I find that the Tenant was properly served with the Landlord's demands to pay the electricity bills, as detailed above.

Accordingly, I find the Landlord is eligible for recovery of electricity costs billed to the rental unit, less \$50.00 per bill for the water pump usage. I, therefore, **award the Landlord with \$1,529.72 from the Tenant**, pursuant to section 67 of the Act.

The Landlord is granted a **Monetary Order** from the Tenant for **\$1,529.72** in this regard.

Conclusion

The Tenant is unsuccessful in her applications, as she failed to serve the Agent with her Notice of Hearing and evidence pursuant to the Rules. The Tenant's claims are, therefore, dismissed without leave to reapply, pursuant to section 62 of the Act.

Pursuant to section 55 (1.1) of the Act, the Landlord is eligible to claim outstanding rent owing, given the Tenant's application to cancel a 10 Day Notice. The Agent has provided sufficient evidence to meet his burden of proof in this regard. As such, the Landlord is granted a **Monetary Order** from the Tenant for **\$1,529.72**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 1, 2022

Residential Tenancy Branch