



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF; CNC, MNR, RP, RR, FF

Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the Act for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord testified that she served the tenant with the dispute resolution package on 15 January 2015 both by posting it to the tenant's door and by registered mail. The landlord provided me with a Canada Post tracking number that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the landlord's dispute resolution package pursuant to sections 89 and 90 of the Act.

The tenant testified that she served the landlord with the dispute resolution package on 9 January 2015 by regular mail. Sending items by regular mail is not an accepted service method for documents that are required to be served pursuant to section 89; however, the landlord did receive the tenant's dispute resolution package and had actual notice of these proceedings. On the basis of this evidence, I am satisfied that the landlord was served with the tenant's dispute resolution package.

The landlord testified that she served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 6 January 2015 by posting it to the tenant's door. The tenant did not contest this evidence. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

The tenant did not submit any documentary evidence in support of her claim.

Preliminary Issue – Tenant's Request to Amend Application

At the hearing, the tenant asked to amend her application to change her claim from an application to cancel a 1 Month Notice to an application to cancel a 10 Day Notice. The tenant and landlord confirmed that there was only ever one notice issued and that the notice was the 10 Day Notice. The landlord did not consent to this amendment; however, I allowed this amendment—pursuant to paragraph 64(3)(c)—as the landlord ought to have known that the tenant was disputing the 10 Day Notice so there is no undue prejudice to the landlord by allowing the amendment.

Preliminary Issue – Late Evidence

The agent testified that she served the tenant with all of her evidence on 24 January 2015 by posting it to the tenant's door. This evidence included:

1. an original Proof of Service of Notice to End Tenancy;
2. a copy of the 10 Day Notice;
3. a three page submission to the Residential Tenancy Branch;

4. various emails to and from the tenant and landlord dated:
 - a. 30 June 2014;
 - b. 3 December 2014;
 - c. 4 December 2014;
 - d. 7 December 2014;
 - e. 9 December 2014;
 - f. 23 December 2014;
 - g. 1 January 2015;
 - h. 7 January 2015; and
 - i. 9 January 2015;
5. a copy of the move-in condition inspection report;
6. a copy of the residential tenancy agreement;
7. a copy of an invoice from a pest control company;
8. a copy of a report from a pest control company;
9. a photograph taken 6 January 2015 that shows three pieces of paper attached to a door;
10. a photograph taken 6 January 2015 of a notice to enter;
11. emails to the landlord from the landlord containing various text messages to and from the tenant and landlord dated:
 - a. 29 July 2014;
 - b. 2 January 2015;
 - c. 3 January 2015;
 - d. 4 January 2015; and
 - e. 8 January 2015;
12. various emails to and from a strata management company regarding dryer vents dated:
 - a. 31 December 2014; and
 - b. 6 January 2015;
13. a copy of a handwritten note;
14. an email dated 8 January 2015 from the landlord to LM regarding a visit from a firefighter to examine the dryer;
15. an email to the landlord from the landlord attaching a photograph;
16. a photograph of a portion the first page of the landlord's three page submission to the Residential Tenancy Branch; and
17. a photograph of a package attached to a door.

In accordance with section 90 of the Act, this evidence was deemed received by the tenant on 27 January 2015. The tenant claims that she has not received this evidence, but stated that she had been at the rental unit during this time period.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that evidence from the applicant must be received by the respondent not less than 14 days before the hearing. Rule 3.15 of the Rules sets out that a respondent must receive evidence from the applicant not less than 7 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, qualified by the words “not less than”, the last day for the landlord to file and serve additional evidence in support of her application was 15 January 2015. In accordance with rule 3.15 and the definition of days, the last day for the landlord to file and serve additional evidence in reply to the tenant’s application was 22 January 2015.

This evidence was not served within the timelines prescribed by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules). Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

I admit as evidence the following items on the basis that the tenant had actual knowledge of the documents and accordingly, there is no undue prejudice to the tenant in admitting the documents: 2, 4, 5, and 6. The tenant was previously provided with copies of these items in the course of the tenancy, or, in the case of the emails, was a participant in the items’ creation.

I exclude as evidence the following items on the basis that the tenant did not have knowledge of these documents prior to the hearing and would be prejudiced by not having the opportunity to examine the documents in advance: 1, 3, 7, 8, 9, 10, 12, 13, 14, 15, 16, and 17.

I exclude item number 11 as the evidence was not in its original form and thus the tenant was entitled to investigate whether or not the emails were true copies of the original texts.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary order for the cost of emergency repairs? Is the tenant entitled to an order that the landlord make repairs to the rental unit? Is the tenant entitled to a reduction in rent for a reduction in the value of the tenancy agreement? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

I was provided with a written tenancy agreement signed by the parties on 11 June 2014. This tenancy began 29 June 2014. Monthly rent of \$1,200.00 is due on the first. The landlord testified that she continues to hold the tenant's security deposit of \$600.00, which was collected 11 June 2014.

The landlord and tenant conducted a move-in inspection on 29 June 2014. There is nothing remarkable in this report.

The landlord seeks a total monetary order of \$1,617.50:

Item	Amount
Unpaid January Rent	\$1,200.00
Recover Pest Control	367.50
One Half Cost of Dryer	600.00
Offset Security Deposit Amount	-600.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Sought	\$1,617.50

The landlord testified that she has not received rent for January. The tenant admits that she has not paid rent for January. The tenant testified that she cannot afford her rent because of all the additional expenses she has incurred related to laundry and insect spray. The landlord testified that she has not received any receipts for emergency repairs from the tenant. The landlord testified that there are no outstanding orders of the Residential Tenancy Branch in relation to this tenancy.

The tenant's application for a monetary award of \$3,080.00, included claims for the following items:

Item	Amount
30 bottles of bug spray at \$15.00/bottle	\$450.00
65 loads of laundry in July at \$12.00/load	780.00
85 loads of laundry in December at \$12.00/load	1,020.00
65 loads of laundry in January at \$12.00/load	780.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Sought	\$3,080.00

The landlord testified that she attended to everything that the tenant asked of the landlord.

The tenant testified that she noticed her cat was itching in December. The tenant testified that the previous tenant had a cat. The tenant testified that her body was covered in bites. The landlord testified that she was not alerted of any insect issue until 3 December 2014.

The landlord provided copies of an email exchange between the tenant and landlord.

On 3 December 2014, the tenant emailed the landlord reporting that she had placed a stop payment on her December rent because of an insect infestation. The tenant alleges in this email that the infestation predated her tenancy.

On 4 December 2014, the landlord emailed the tenant stating that the landlord would arrange for pest control to assess the situation.

On 7 December 2014, the tenant emailed the landlord stating that the infestation predated the tenancy. In the email the tenant alleged damage as a result of the infestation.

On 9 December 2014, the landlord emailed the tenant stating that the pest control person had left a message with the tenant and asked the tenant to return the call.

The landlord testified that she attended at the rental unit on the second or third of January with the pest control company. The landlord testified that she was told by the pest control person that he did not identify any signs of pest infestation, but stated that he would spray the unit to satisfy the tenant. The tenant testified that she showed the pest control person examples of the bugs she had found but that he was unable to identify the insect. The tenant testified that she thought that she had a bedbug infestation, but that it was actually fleas. The tenant testified that her laundry use was higher in December because she had to wash everything because of the insect infestation. The tenant testified that the pest control person smoked the rental unit to pacify the tenant, but did not spray it.

The tenant testified that she did not have use of the dryer for the month of July. The landlord testified that the dryer was working in July. The landlord testified that shortly after the tenant moved into the rental unit, the dryer ducts were cleaned. The landlord testified that the dryer was purchased in 2010.

The tenant testified that on December 13 at 0230 the dryer caught on fire. The tenant testified that the fire was contained within the dryer itself in the back of the dryer. The tenant testified that she did not have the use of the dryer in December and January because of a fire. The landlord testified that she was notified of a fire in the dryer in early January. The landlord testified that the tenant told her the fire extended into the walls. The tenant was told by a friend that that it was likely the coating of the dryer wires that was burning or melting off. The landlord testified that when she investigated the fire, she found a large quantity of water that the tenant had put into the dryer to extinguish the purported fire. The landlord testified that she was concerned about the functionality of the dryer because of the water, unplugged the dryer and disconnected the breaker for that circuit.

The landlord testified that she arranged for a firefighter to attend at the rental unit to inspect the dryer and surrounding area. The landlord testified that the firefighter told her to remove the dryer from the rental unit as the firefighter had concerns about the tenant's ability to safely use the unit. The firefighter told the landlord that there was no evidence of a fire. The firefighter stated that if there was a fire it was caused by lint accumulation. The tenant testified that she cleans the dryer vent every time she does laundry. The landlord testified that she was told by a professional that dryers of this age

have an automatic shut off if the lint trap gets too full. The landlord testified that the tenant's behaviour is a safety hazard to the building.

The landlord testified that she seeks damages for the damage done to the dryer when the tenant placed water in it. The landlord alleges that there was never a fire. The landlord testified that she has not yet repaired the dryer and that she is not sure whether it has to be repaired or replaced.

The tenant testified that her front door does not lock because it has been kicked in. The landlord testified that the front door does lock, but that the physical door is damaged. The landlord testified that she was not told about this deficiency until January and that she repaired the lock in January.

The tenant testified that the breakers for the kitchen and bedroom keep on tripping. The landlord testified that she had not been told about the breakers. The tenant admitted that she had not told the landlord about the breaker problem until the hearing.

On 6 January 2015, the landlord served the tenant with the 10 Day Notice. The 10 Day Notice was dated 6 January 2015 and set out an effective date of 23 January 2015. The 10 Day Notice was given for \$1,200.00 in outstanding rent that was due 1 January 2015.

Analysis

I will consider the issues raised by these applications in the following order:

1. the 10 Day Notice and the landlord's application for unpaid rent;
2. the landlord's application for damages;
3. the tenant's application for the cost of emergency repairs;
4. the tenant's request for repairs;
5. the tenant's request to abate her rent; and
6. ancillary orders respecting filing fee and security deposit.

10 Day Notice and Application for Unpaid Rent

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide evidence that she was entitled to deduct amounts for emergency repairs that she had conducted (pursuant to subsection 33(3)) or as a result of a prior order from the Residential Tenancy Branch.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord testified that the tenant failed to pay rent for January. The tenant admits that she did not pay January's rent.

As the tenant has failed to pay her rent in full when due, I find that the 10 Day Notice issued 6 January 2015 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on 23 January 2015, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenant admits that she has not paid January's rent. I find that the landlord is entitled to this amount. I issue a monetary order in the landlord's favour in the amount of \$1,200.00, to enable the landlord to recover unpaid rent from the tenant.

Landlord's Application for Damages

The landlord seeks compensation for the costs of the pest control treatment and the cost of repairing or replacing the dryer.

The landlord has not yet ascertained what the damage is to the dryer. As the landlord is unable to show what damages, if any, exist at this time, her claim is brought too early. As the landlord's claim is brought too early, I dismiss this portion of the landlord's claim with leave to reapply.

In support of her application to recover the cost of pest control, the landlord relies on the evidence provided in a letter from the pest control company. I have excluded this evidence as the landlord did not provide the evidence to the tenant within the timeline provided for under the Rules. Without this evidence, the landlord fails to meet her burden to prove, on a balance of probabilities, that the tenant's request for pest control was unwarranted. Accordingly, I dismiss this portion of the landlord's claim without leave to reapply.

Tenant's Application for Cost of Emergency Repairs

The tenant seeks recover of the cost of the insect spray in the amount of \$450.00.

Section 33 of the Act describes "emergency repairs" as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

Remedying an insect infestation is not an "emergency repair" within the meaning of the Act. Accordingly, the tenant is not entitled to recover the cost of these repairs. This portion of the tenant's claim is dismissed without leave to reapply.

Tenant's Application for Repairs

The tenant requests repairs to the front door and to the breaker box. As the tenancy is ending, I decline to order that these repairs be made at this time. I dismiss this portion of the tenant's claim without leave to reapply.

Tenant's Request for Rent Abatement

The tenant has requested that I order that her rent be abated in order to compensate her for the loss of laundry facilities in July, December and January. I find that laundry facilities were available to the tenant in July 2014. Further, I find, on a balance of probabilities, that there was no fire in the dryer as alleged by the tenant. I find that the tenant unnecessarily placed water in the dryer requiring that the dryer be removed for safety reasons. Further, and in the alternative, the tenant has not provided me with any receipts to substantiate her large claim for the cost of her laundry. Without any documentary evidence before me to substantiate the tenant's claim, I find that she has failed to prove the extent of her alleged damages.

I dismiss this portion of the tenant's claim without leave to reapply.

Ancillary Orders Respecting Filing Fees and Security Deposit

As, on balance, the landlord was successful in this application she is entitled to recover her filing fee of \$50.00 from the tenant.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application in respect of the dryer repair or replacement is dismissed with leave to reapply.

The landlord's application in respect of the pest control company is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$650.00 under the following terms:

Item	Amount
Unpaid January Rent	\$1,200.00
Offset Security Deposit Amount	-600.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$650.00

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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

Dated: February 3, 2015

Residential Tenancy Branch

