



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OKANAGAN STRATA MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF, O

Introduction

This hearing dealt with cross applications. The tenant filed to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and monetary compensation for emergency repairs. The landlord applied for an Order of Possession for unpaid rent; monetary compensation for unpaid and/or loss of rent; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Should the 10 Day Notice be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to compensation for unpaid and/or loss of rent?
4. Is the tenant entitled to compensation for emergency repairs?

Background and Evidence

The month to month tenancy commenced September 15, 2014 and the tenant paid a security deposit of \$400.00. On October 6, 2014 the tenant and the named landlord (a property manager) executed a written tenancy agreement. The tenancy agreement provides that the rental unit is to be occupied by the tenant and two adult occupants as named in the tenancy agreement. The agreement provides that the tenant is responsible for paying the monthly rent of \$800.00 on or before the first day of every month.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on December 2, 2015 indicating rent of \$1,900.00 was outstanding as of December 1, 2015 and a stated effective date of December 12, 2015 (the Notice). The landlord attended the property to

serve the Notice but the gates were locked so the landlord taped the Notice on the gate post. The tenant acknowledged finding the Notice a few days later. I was satisfied the tenant filed to dispute the Notice within the time limit for doing so and I was prepared to consider the Notice to be disputed; however, the tenant stated that he is no longer residing at the rental unit and he and the occupant are in the process of removing their possessions from the property. The tenant stated that he did not object to the landlord obtaining an Order of Possession but requested four days to finish vacating the property. The landlord was agreeable to the tenant's request for four days. The landlord enquired as to the best way to serve the tenant with the Order of Possession. The tenant stated that posting the Order of Possession on the door of the rental unit is the best way for him to receive it and that if the gates are locked the landlord may post the Order of Possession on the gate post. The tenant also asked as to how he should return the keys to the landlord. The landlord provided the tenant with instructions to return them to a particular realtor and provided the realtor's name and location to the tenant.

As the parties were in agreement as to ending the tenancy and returning possession of the property to the landlord, the only issues under dispute were monetary.

The landlord had applied for compensation of \$2,700.00 for unpaid rent and loss of rent of for months up to an including January 2016. This amount is the \$1,900.00 that appears on the Notice and in the ledger plus \$800.00 for loss of revenue for January 2015 since the tenant still has possession of the rental unit.

In support of the amount of \$1,900 that appears on the Notice, the landlord provided a copy of the ledger printed on December 2, 2015. A copy of the ledger was also provided to the tenant.

The tenant raised the following concerns with respect to the amount appearing on the Notice and the ledger:

1. The tenant submitted that he gave \$400.00 in cash to the owner of the property in September 2015 or October 2015 although he was not certain as to the date.
2. The tenant had received a 10 Day Notice in November 2015 and it indicated rent of only \$800.00 was outstanding at that time and then a payment was made so he questioned the accuracy of the Notice issued in December 2015 since it indicates \$1,900.00 is outstanding.
3. The tenant was of the position that \$250.00 should be deducted from the rent owed because he purchased a stove at a cost of \$250.00. The tenant stated that the stove in the rental unit was not working for a number of months and he

eventually purchased another one but the landlord refuses to compensate him for it. The tenant claims he was told to put the rental unit stove back in place so he moved the stove he purchased to a storage shed.

The landlord provided the following responses to the issues raised by the tenant:

1. The owner gave the \$400.00 cash payment received from the tenant to the landlord and the payment was recorded in the ledger as of August 28, 2015.
2. The amount reflected on the 10 Day Notice issued in November 2015 reflects that rent for November 2015 had not been received but that the rental arrears that had accumulated prior to November 2015 had not been included on that Notice; whereas, all of the rental arrears were included on the 10 Day Notice issued in December 2015.
3. The landlord had authorized the tenant to replace a stove element but not the purchase of another stove.

The tenant stated that he had an agreement with the owner regarding compensation for cleaning up the property when the tenancy first started. I noted that the ledger had provided for an \$800.00 credit to the tenant with a notation that it related to an agreement with the owner. However, I did not permit the tenant to continue with this argument as the tenant had not raised this issue or provided full particulars of this issue on his application, as required under section 59 of the Act, and the owner was not present during the hearing. Accordingly, I found it prejudicial to expect the landlord provide a response without prior notice that it would be raised as an issue at the hearing.

The tenant and an occupant raised concerns about the condition of the rental unit due to repairs not made to the stove and dryer. However, repair issues are not a basis to withhold rent under the Act unless an emergency repair is made by the tenant pursuant to all of the requirements of section 33 of the Act. A non-working or partially working clothes dryer and stove do not meet the definition of an emergency repair by definition under section 33. Since the tenant did not apply for compensation for loss of use and enjoyment or breach of the tenancy agreement or provide sufficient particulars regarding such losses, if any, I did not consider these issues further but I informed the tenant of his right to do so under another application.

On the tenant's application it was also noted that there was no move-in inspection and the owner would not permit more than three occupants to reside in the rental unit; however, I did not consider these issues further as they are unrelated to a tenant's requirement to pay rent and there was no remedy sought.

The occupant raised a concern that Income Assistance sent a \$400.00 cheque to the landlord on her behalf for the month of December 2015 but it was applied to the outstanding rent for November 2015 in the ledger. I was satisfied that the 10 Day Notice issued December 2, 2015 reflects the outstanding balance of rent and rental arrears after taking into account that payment from the Ministry. As I informed the parties and the occupant it is apparent to me that the landlord is pursuing an end to the tenancy and monetary compensation due to unpaid rent for all months including the month of December 2015. Even if the subject payment was reflected as a payment toward December 2015 it would not change the outcome of this decision. Further, the occupant has had the benefit of use and occupancy of the rental unit throughout the month of December 2015 and is not liable to the landlord for any outstanding rent. Accordingly, I found the occupant's submission of no consequence or relevance in this matter.

The occupant also stated that another occupant of the rental unit had a cheque sent to the owner of the property in December 2015 but that it went to the owner's summer home address in error and that it has not yet been cashed or returned. The landlord acknowledged that the cheque was forwarded from the owner to the landlord recently and that the cheque has not yet been cashed. The landlord indicated that any monies received after this hearing will be reflected in a revised ledger and deducted from the balance of the Monetary Order.

The documentary evidence provided to me by the parties included a copy of the tenancy agreement; the 10 Day Notice dated December 2, 2015; and, a copy of the ledger as of December 2, 2015.

Analysis

During the hearing, the parties reached an agreement with respect to returning possession of the rental unit to the landlord. As such, I find it unnecessary to consider whether the 10 Day Notice should be upheld or cancelled and I provide the landlord with an Order of Possession as agreed upon by the parties during the hearing. Provided to the landlord is an Order of Possession effective four days after service. The landlord may serve the Order of Possession in any way permitted under section 88, including posting on the door of the rental unit, and the landlord is also authorized to post it to the gate post if the gates are locked.

As to each of the monetary claims before me, I provide the following findings and reasons.

Tenant's claim for emergency repair

Section 33 of the Act provides the definition of an emergency repair as follows:

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

I find that a partially working stove and/or oven does not meet the definition of an emergency repair. Therefore, I find the purchase of a stove by the tenant is not recoverable from the landlord as an emergency repair and I dismiss the tenant's request for such.

Since the landlord has not compensated the tenant or agreed to compensate the tenant for the purchase of the stove, the stove purchased by the tenant remains the property of the tenant. Accordingly, he is at liberty to sell it to recover all or some of his costs related to its purchase.

As the parties were informed during the hearing, the lack of a functioning stove and dryer may be a basis for the tenant to pursue the landlord for compensation for loss of use or breach of the tenancy agreement. The tenant retains the right to make another application for such compensation if he so chooses, within the statutory time limit provided under the Act.

Landlord's claim for unpaid and loss of rent

The landlord provided a ledger in support of the \$1,900.00 in outstanding rent that appears on the 10 Day Notice. The tenant raised concerns with respect to the accuracy of the ledger. The tenant did not point to any specific charge in the ledger that was inaccurate; rather, the tenant primarily focused on payments or credits that may not be reflected in the ledger. Where a tenant is of the position that a payment has been made but not recorded in the ledger or that a credit should be applied to the ledger, the tenant bears the burden to prove the payment was made or an entitlement to the credit sought. The tenant did not offer such evidence except for a vague recollection about a cash payment and the landlord had recorded one cash payment. I found the landlord provided reasonably likely and logical explanations for each of the issues raised. Therefore, I was satisfied that the ledger was accurate as of December 2, 2015 and I find the landlord entitled to recover unpaid rent of \$1,900.00 up to and including the month of December 2015.

Since the tenant and the occupant(s) remained in possession of the rental in January 2016 I find the landlord entitled to recover loss of rent from the tenant in the amount of \$800.00 and I award that amount to the landlord as well.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent and I award the landlord recovery of the \$50.00 filing fee paid by the tenant.

In light of the above, I provide the landlord with a Monetary Order calculated as above:

Unpaid Rent up to and including December 2015	\$1,900.00
Loss of Rent for January 2016	800.00
Filing fee	50.00
Less: security deposit	<u>(400.00)</u>
Monetary Order for landlord	\$2,350.00 .

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Any payments or monies received by the landlord after this hearing are to be deducted from the Monetary Order and the landlord may enforce the balance that remains outstanding.

Conclusion

The parties reached an agreement with respect to returning possession of the property to the landlord. Pursuant to that agreement I provide the landlord with an Order of Possession effective four days after service. Acceptable service of the Order of Possession includes posting on the gate post in the event the gates to the property are locked.

The landlord has authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$2,350.00 to serve and enforce.

The tenant's application to recover the cost of an emergency repair has been dismissed. The tenant remains at liberty to file another application if he so chooses for loss of use and enjoyment or breach of the tenancy agreement, if any.

This decision 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: January 21, 2016

Residential Tenancy Branch

