



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR OPR MNR MNSD FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the Act"). The landlord applied for an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46 and a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33.

Both parties attended (2 landlords and 2 tenants) and were given an opportunity to make submissions with respect to their respective applications. Both parties acknowledged receipt of the other's Application for Dispute Resolution hearing package. The landlords provided evidence that a 10 Day Notice was served to the tenants on June 27, 2016. The tenants confirmed receipt of the 10 Day Notice.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the landlords entitled to a monetary order for unpaid rent and to retain all or a portion of the tenant's security deposit?

Are the tenants entitled to recover the cost of emergency repairs?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

Both parties agreed that this tenancy began on August 1, 2015 as a one year fixed term to continue as a month to month tenancy after that date. A copy of the residential tenancy agreement was submitted indicating a rental amount of \$2200.00 payable on the first of each month. Landlord GS confirmed that she continues to hold a security deposit paid at the outset of the tenancy by both tenants.

Tenant TR continues to reside in the rental unit. Tenant GS has vacated the rental unit. Both parties agree that Tenant TR did not pay rent January, May or June 2016. The landlord testified that the tenant did not pay December 2015, February 2016 and March 2016 rents were not paid in full. The landlord also testified that the November 2015 remains unpaid and outstanding however the tenant testified that November 2015 rent was paid in full. She submitted copies of rental receipts from August 2015. Some receipts were missing. Some indicated only a partial rent payment by the tenants. The landlord sought \$12, 430.00 in unpaid rent however the outstanding amounts provided by the landlords at this hearing total \$9608.00.

The landlord submitted receipts and a log of all rental payments made by the tenant(s). Those receipts indicate payments as follows,

Item	Amount
Rent Paid – October 2015	\$3300.00
Rent Paid – November 2015	1280.00
Rent Paid – December 2015	3800.00
Rent Paid – January 2016	00.00
Rent Paid – February 2016	300.00
Rent Paid – March 2016	1150.00
Rent Paid – April 2016	2562.00
No Rent Paid – May 2016	00.00
No Rent Paid – June 2016	00.00
No Rent Paid – July 2016	00.00
Total Rent Paid, According to LL	\$12392.00
Rental Total Due before pmts: \$2200.00 per 10 months	22000.00
Total Rent Outstanding, According to LL	\$9608.00

Analysis

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify the issuance of the notice to end tenancy. In this case, the tenants did not dispute that she withheld rent and that she has subsequently been unable to pay recent rental amounts as they become due.

The tenants failed to pay the rental arrears within five days of receiving the 10 Day Notice to End Tenancy. The tenants have been unsuccessful in their application to cancel the 10 Day Notice in that I find that the tenants did not provide clear evidence of out of pocket expense or any agreement with the landlord to withhold a portion of rent to compensate for the leak and

emergency repairs in the rental unit. Pursuant to section 26 of the Act, the tenants were not entitled to withhold rent from the landlords. In accordance with section 46(5) of the *Act*, and in these circumstances, I find that the tenants are required to vacate the premises by August 31, 2016. I find that the landlords are entitled to a 2 day Order of Possession.

I also find that the landlord is entitled to receive an order for unpaid rent. I accept the testimony and supporting documentary evidence (receipts) submitted by the landlord that show the outstanding rent owed by the tenant. The tenants both provided evidence regarding rental payment that supported the landlord's claim. I am issuing the attached monetary order that includes the landlord's application for \$9608.00 in unpaid, outstanding rent.

With respect to the tenants request for the cost of emergency repairs, and pursuant to section 33 of the Act, emergency repairs must be urgent, necessary for the health and safety of anyone or for the use of the residential property and can include but are not limited to repairs of major leaks in the pipes, blocked water or were pipes, heating or electrical. Section 33(3) to 33(6) states,

- 33** (3) A tenant may have emergency repairs made only when all of the following conditions are met:
- (a) emergency repairs are needed;
 - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
 - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.
- (4) A landlord may take over completion of an emergency repair at any time.
- (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
- (a) claims reimbursement for those amounts from the landlord, and
 - (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.
- (6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:
- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
 - (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The tenant did not provide the landlord with a written account of emergency repairs with receipts. The tenant did not submit such an account with receipts for this hearing. However, there is minimal dispute between the parties that; a leak occurred and that the tenants engage in steps to repair the leak within their rental unit. I accept the tenant's testimony that repairs were needed and the landlord told the tenants to "fix the problem". The landlord conceded in his testimony that the tenants did work to repair the leak. He was merely dissatisfied with the quality of their work.

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the Act; a tenant must pay rent; a landlord must provide the premises in an acceptable condition. If a tenant is deprived of use of all or part of their rental property, the tenant may be entitled to damages. The types of damages an arbitrator may award include; out of pocket expenditures if proved at the hearing; an amount to reflect general loss where it has not been possible to place an actual value on the loss; "nominal damages" where there has been no significant loss or no significant loss has been proven, but the nominal damages are an affirmation that there has been an infraction of a legal right. Aggravated damages are reserved for significant infractions by one party impacting the other party.

I find that the tenants have not proven out of pocket expenses. However, I find that the tenants have proven that they incurred both a general loss and that they are entitled to a nominal award that reflects their losses as a result of the leak and their losses in attempting, at the behest of the landlord, to undertake the repair themselves. Therefore, I find that the tenants are entitled to nominal damages totalling \$3500.00.

The landlord testified that he continues to hold a security deposit of \$1100.00 plus any interest from August 1, 2015 to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit *plus any interest* in partial satisfaction of the monetary award. There is no interest payable for this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

As a result of my findings, the landlord is entitled to a monetary order as follows,

Item	Amount
Outstanding Rent: 2015-2016 to landlord	\$9608.00
Nominal Award to Tenants	-3500.00
Security Deposit	-1100.00
Filing Fee	100.00
Total Rent Paid, According to LL	\$5108.00

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective August 31, 2016. 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.

I issue a monetary order to the landlord in the amount of **\$5108.00**.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

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: August 9, 2016

Residential Tenancy Branch