



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MT, OLC, RP, PSF, LRE, O, MNDC, MNR

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied:

- to cancel a Notice to End Tenancy for Unpaid Rent;
- for more time to cancel a Notice to End Tenancy;
- to recover the cost of emergency repairs;
- a monetary Order for money owed or compensation for damage or loss;
- for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement;
- for an Order requiring the Landlord to make repairs;
- for an Order requiring the Landlord to provide services or facilities;
- to suspend or set conditions on the Landlord's right to enter; and
- for "other".

The Tenants applied to dispute the Ten Day Notice to End Tenancy for Unpaid Rent that is the subject of this dispute within five days of receiving it. I therefore do not need to consider whether the application for more time to cancel a Notice to End Tenancy.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and 11 pages of evidence the Tenant submitted with the Application were sent to the Landlord, via registered mail, although he cannot recall the date of service.

The Landlord stated that he received most of these documents on, or about, July 25, 2017. He stated that he did not receive a copy of the tenancy agreement or the notice of inspection that the Tenant submitted in evidence. The documents the Landlord acknowledged receiving were accepted as evidence for these proceedings.

The Tenant requested an adjournment for the purposes of re-serving the Landlord with the tenancy agreement and the notice of inspection that the Landlord did not acknowledge receiving. The Landlord stated that he does not want to adjourn the matter and he is willing to proceed with the hearing without viewing these documents, with the understanding that they

would be accepted as evidence. I therefore denied the Tenant's request for an adjournment and accepted the documents as evidence.

On July 13, 2017 the Tenant submitted digital evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord with the Application for Dispute Resolution. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were advised that I did not have access to the digital evidence at the time of the hearing as it had not yet been forward to me by the Residential Tenancy Branch. They were advised that the digital evidence could be referred to during the hearing and that I would have the ability to view it after the hearing. They were advised that, if necessary, the hearing would be adjourned until such time as the digital evidence was forwarded to me by the Residential Tenancy Branch. The Tenant was opposed to proceeding with the hearing until such time as I had the digital evidence before me.

I continued with the hearing in spite of the Tenant's objection with the intent to adjourn the hearing if it became apparent the digital evidence was relevant and that an adjournment was necessary to discuss that evidence. For reasons that will be outlined later in this decision, the matter was concluded without the need for an adjournment.

On July 17, 2017 the Landlord submitted 1 page of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was not served to the Tenant. As the evidence was not served to the Tenant, it was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided:

Should the Notice to End Tenancy for Unpaid Rent, dated July 10, 2017, be set aside?

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

Are the Tenants entitled to a monetary Order for money owed or compensation for damage or loss?

Is there a need for an Order requiring the Landlord to comply with the *Residential Tenancy Act* (Act) or the tenancy agreement?

Is there a need for an Order requiring the Landlord to make repairs?

Is there a need for an Order requiring the Landlord to provide services or facilities?

Is there a need for an Order suspending or setting conditions on the Landlord's right to enter the rental unit?

Background and Evidence:

The Tenant stated that he and his co-tenant signed a tenancy agreement, a copy of which the Landlord submitted in evidence.

The Landlord and the Tenant agree that:

- rent of \$900.00 is due by the first day of each month;
- on July 10, 2017 the Tenant was personally served with a Ten Day Notice to End Tenancy for Unpaid Rent, which has a declared effective date of July 20, 2017; and
- the Tenant is still living in the rental unit.

The Tenant stated that the rental unit was vacated on July 30, 2017. The Landlord stated that he was not aware the unit had been vacated.

The Tenant stated that when this tenancy began the Landlord agreed to reduce the rent by \$100.00 in exchange for yard maintenance. The Landlord stated that he did not agree to reduce the rent by \$100.00.

The Landlord stated that when the Ten Day Notice to End Tenancy was served on July 20, 2017 the Tenants owed \$3,900.00 in rent. The Tenant stated that when the Notice to End Tenancy was served on July 20, 2017 the Tenants owed \$2,300.00 in rent.

The Tenant stated that during the first or second month of the tenancy he made an emergency repair to the breaker panel because the oven and dryer were not working properly. He stated that he told the Landlord about the need for the repair; that the Landlord told him to repair it; that he "showed" the Landlord a copy of the receipt for the materials used for the repair; and that the Landlord never compensated him for the costs of the repair.

The Landlord stated that the Tenants never told him of the need for this repair and they never showed him a receipt for materials used to repair the breaker panel.

The Tenant stated that he made other emergency repairs to the rental unit, including tarping a leaking roof. He stated that he never provided the Landlord with receipts or requests for payment in regards to these repairs.

The Tenants are seeking compensation for a variety of work completed at the rental unit, including removing trees, installing doors, framing walls, demolishing and rebuilding floors, rebuilding skirting, and landscaping. The Tenant stated that all of this work was completed at the request of the Landlord. The Landlord stated that he did not ask the Tenant to complete any of these repairs.

The Tenants are seeking compensation for a variety of work completed off site, including cleaning and power washing at other properties owned by the Landlord.

The Tenant stated that his digital evidence shows the nature of the work completed at the rental unit. He stated that the Landlord appears in some of the video evidence, which he contends corroborates his claim that the Landlord asked him to complete the work.

Analysis:

On the basis of the written tenancy agreement I find that the parties entered into a tenancy agreement which required the Tenants monthly rent of \$900.00 by the first day of each month.

I find that the Tenants submitted insufficient evidence to establish that the Landlord agreed to reduce the rent to \$800.00. In reaching this conclusion I was heavily influenced by the absence of any evidence that corroborates the Tenant's testimony that the Landlord agreed to reduce the rent or that refutes the Landlord's testimony that he did not agree to reduce the rent. I therefore find that the rent payable was \$900.00 per month.

A landlord has the right to end a tenancy if rent is not paid when it is due, pursuant to section 46(1) of the *Act*, by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy, served pursuant to section 46(1) of the *Act*, was personally served to the Tenants on July 20, 2017.

On the basis of the testimony of both parties, I find that the Tenants owed at least \$2,300.00 when the Ten Day Notice to End Tenancy was served on July 20, 2017. On the basis of the undisputed evidence I find that no rent has been paid since July 20, 2017.

As the Tenants had not paid all of the rent that was due by the time the Ten Day Notice to End Tenancy was served and they did not pay all of the overdue rent within five days of being served that Notice, I find that the Landlord has grounds to end this tenancy, pursuant to section 46 of the *Act*. I therefore dismiss the Tenants' application to set aside this Notice to End Tenancy and, pursuant to section 55(1) of the *Act*, I grant the Landlord an Order of Possession.

As this tenancy is ending, I find there is no need to consider the application for an Order requiring the Landlord to make repairs or to provide services or facilities.

As this tenancy is ending, I find there is no need to suspend or set conditions on the Landlord's right to enter the rental unit. The Landlord remains obligated to comply with section 29 of the *Act*, which sets conditions on the Landlord's right to enter the unit.

It is not necessary for me to determine precisely how much rent was due when the Ten Day Notice to End Tenancy was served, as the Landlord has not applied to recover outstanding rent.

Section 33(3) of the *Act* stipulates that a tenant may have emergency repairs made only when emergency repairs are needed; 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; and following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Even if I accepted that the Tenants made an “emergency” repair to the breaker panel, I find that the Tenants have submitted insufficient evidence to establish that they complied with section 33(3) of the *Act*. In reaching this conclusion I was heavily influenced by the absence of any evidence that corroborates the Tenant’s testimony that he told the Landlord about the need for the repairs or that refutes the Landlord’s testimony that he was not told of the need for the repairs.

Section 33(3) of the *Act* stipulates that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Even if I accepted that the Tenants told the Landlord of the need to repair the breaker panel, I find that there is no evidence that they complied with section 33(5) of the *Act*. In reaching this conclusion I was heavily influenced by the Tenant’s testimony that he “showed” Landlord a copy of the receipt for the materials used for the repair; by the Landlord’s testimony that he was never showed a copy of this receipt; and by the fact that receipt was not submitted in evidence.

As there is insufficient evidence to establish that the Tenants complied with section 33(3) and 33(5) of the *Act*, I find that they have failed to establish that they are entitled to compensation for repairing the breaker panel, which the Tenants contends was an emergency repair. I therefore dismiss the Tenants’ application to recover the cost of this emergency repair.

On the basis of the Tenant’s testimony that he did not provide the Landlord with receipts or other requests for payments for repairs he considers to be emergency repairs, I find that he is not entitled to recover the cost of any of those alleged emergency repairs.

I decline to consider any of the Tenants’ claims for making repairs to the rental unit or other property owned by the Landlord. Even if I accepted that the Landlord asked the Tenants to make repairs, I find that would constitute an employment contract which is beyond my jurisdiction. I only have authority to consider disputes regarding the tenancy agreement and/or the *Act*.

As I do not have jurisdiction over an employment agreement between the parties, I find that the digital evidence the Tenants submitted in support of their claim to be reimbursed for this labour is not relevant. I therefore concluded that it was not necessary to adjourn the hearing for the purposes of discussing that evidence.

Conclusion:

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Tenants have not established a monetary claim.

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 02, 2017

Residential Tenancy Branch