



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPRM-DR FFL

Tenant: *Application filed on November 09, 2017*

CNR, AAT, ERP, LAT, LRE, MNDCT, PSF, RP RR

Application filed on December 04, 2017

CNR, AS, ERP, LAT, LRE, MT, OPT, RP, RR

Introduction

This hearing dealt with applications by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant sought:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- more time to make an application to cancel the landlord's 10 Day Notice pursuant to section 66;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to change the locks to the rental unit pursuant to section 70;

- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an Order of Possession of the rental unit pursuant to section 54; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

The landlord, the landlord's assistant and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged that they received a copy of the Landlord's Application for Dispute Resolution (Landlord's Application) while the landlord acknowledged receiving the Tenant's Applications for Dispute Resolution (Tenant's Applications). Pursuant to section 89 of the *Act*, both parties are found to have been duly served with the applications.

The landlord testified that she provided her evidence to the tenant by posting it to the door of the rental unit on January 09, 2018. The tenant confirmed that they received the landlord's evidence but testified that they did not open the package as it had the landlord's legal counsel's address for service and not the landlord's. I find that there is no section in the *Act* which restricts a landlord from using an agent to serve evidence, only that it is served in accordance with section 88 of the *Act*, which allows posting evidence to the door of the rental unit. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlord's evidence.

The tenant testified that they served the landlord with their evidence by leaving it in the mail slot of the landlord's residence with their Applications. The landlord submitted that they only received one piece of evidence which they included in their own evidence package. I find that the tenant the most recent pieces of evidence from the tenant were received by the Residential Tenancy Branch (RTB) on January 15, 2018.

Rule 3.3 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence for a cross-application that is intended to be relied on at the hearing must be received by the other party and the RTB not less than 14 days before the hearing. As the tenant did not submit evidence to the RTB in accordance with the

RTB Rule of Procedures and the landlord has disputed receiving this evidence, I find that I will not consider the tenant's evidence received by the RTB on January 15, 2018,. The other evidence submitted by the tenant previous to January 15, 2018, is the 10 Day Notice, the tenancy agreement and a copy of a previous decision. As these documents were also provided by the landlord, I will consider them.

The tenant acknowledged receipt of the 10 Day Notice on November 06, 2017. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice.

The landlord testified that the tenant is still in the rental unit and has not made any payments toward the tenancy since the 10 Day Notice was issued. At the outset of the hearing the landlord sought to increase their monetary claim from \$2,250.00 to \$3,750.00 to reflect the tenants' failure to pay \$750.00 in monthly rent for December 2017 and January 2018, the additional months of unpaid rent waiting for this hearing.

Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as this was clearly rent that the tenant would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

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?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order for the landlord to make emergency repairs to the rental unit?

Is the tenant entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to the other remedies under the *Act* that they are seeking on their Tenant's Applications?

Background and Evidence

Written evidence was provided that this tenancy began on October 1, 2016, with a monthly rent of \$750.00 due on the first day of the month. The landlord testified that she continues to retain a security deposit in the amount of \$350.00.

A copy of the 10 Day Notice, dated November 06, 2017, for \$2,250.00 in unpaid rent was included in the landlord and the tenant's evidence.

The landlord also provided an evidence package which has a description of the events that have occurred with the tenant, copies of the notices for entry given to the tenant, a police report describing circumstances when they accompanied the landlord to keep the peace when attending the rental unit where the landlord was refused entry, a copy of a previous decision from the RTB dated November 03, 2017, and a copy of a note to the tenant indicating that the tenant is required to have insurance as noted in the addendum to the tenancy agreement.

The landlord testified that the tenant has not paid the monthly rent since August 2017 and that they are seeking the monthly rent for September 2017 to January 2018 in the amount of \$750.00 per month.

The tenant admitted that they have not paid any rent since August 2017 and stated that the problems with the landlord began in July 2017 when the tenant was asked to remove marijuana plants from the property and threatened to kick the tenant out because he did not have any insurance. The tenant submitted that the reason that they have not paid any rent is due to dog feces in their yard, which they are claiming compensation for, as well as a hot water tank that is leaking, rats in a storage shed near

the rental unit, a hole in the fence, mouldy windows, broken toilet and ivy growing up the soffit.

The landlord testified that the rat problem in the storage shed has been rectified with traps set that have remained empty when checked recently. The landlord stated that she has not been able to view the hot water tank to verify that it is leaking as the tenant will not let her into the rental unit to inspect it or to make repairs. The landlord stated that she has wanted to inspect the unit as her insurance provider has informed her that her insurance will be null and void if the tenant is growing marijuana plants in the rental unit.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Section 33 of the *Act* allows for a tenant to complete an emergency repair when the landlord has not completed the emergency repair in a reasonable amount of time. Section 33(3) of the *Act* requires the tenant to make two attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs and allowing the landlord reasonable time to complete the repairs before the tenants are able to complete the repairs themselves and recover their expenses from the landlord.

Section 33(1) of the *Act* defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property, for the purpose of repairing major leaks in pipes or roof, damaged or blocked water or sewer pipes or plumbing repairs, primary heating system, damaged or defective locks that give access to a rental unit, electrical systems or in prescribed circumstances, a rental unit or residential property.

I find that the tenant has failed to provide any evidence showing that emergency repairs are required and that they completed these emergency repairs, in accordance with section 33 of the *Act*, which would allow them to recover any amount and withhold the monthly rent.

I find the tenant has indicated that they are withholding the monthly rent due to the dog feces in the yard, which is not considered an emergency repair under section 33 of the

Act. I further find that the tenant has not provided any evidence of the dog feces, or any of the other claims that the tenant has made regarding a broken toilet or hot water heater. I find the tenant has not proven that they incurred a loss under the *Act* due to any of the above issues and were entitled to recover any amount for repairs completed or services not provided.

For these reasons I dismiss the Tenant's Applications requesting compensation for loss under the *Act* and to have the rent reduced for repairs, services or facilities agreed upon but not provided, without leave to reapply.

I find the tenant has admitted that they have not paid any rent to the landlord from September 2017 until the date of the hearing and that they have not provided any evidence that they had any legal authority under the *Act* to withhold the monthly rent

For the above reasons I dismiss the Tenant's Applications to cancel the landlord's 10 day Notice, without leave to reapply.

Section 55(1) of the *Act* reads as follows:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (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.*

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,...and*
- (e) when given by a landlord, be in the approved form...*

I find the 10 Day Notice does not have an effective date. Pursuant to section 68 (1) of the *Act*, I amend the effective date of the 10 Day Notice to November 16, 2017, 10 days from November 06, 2017, the date I have found the 10 Day Notice was received by the tenant. In this case, the tenant and anyone on the premises were required to vacate the premises by November 16, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

As this tenancy is ending I find the remaining claims on the Tenant's Applications are no longer applicable to the tenant and I dismiss them in their entirety, without leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As the tenant has admitted that they have not paid any rent to the landlord since August 2017, I find that the landlord is entitled to a monetary award in the amount of \$3,750.00 for unpaid rent owing for September 2017, October 2017, November 2017, December 2017 and January 2018.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in their Landlord's Application, I allow her to recover the filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenant's security deposit and to recover the filing fee for this application from the tenant.

| Item | Amount |
|----------------------------|----------|
| Unpaid September 2017 Rent | \$750.00 |

| | |
|---------------------------------|-------------------|
| Unpaid October 2017 Rent | 750.00 |
| Unpaid November 2017 Rent | 750.00 |
| Unpaid December 2017 Rent | 750.00 |
| Unpaid January 2018 Rent | 750.00 |
| Less Security Deposit | -350.00 |
| Filing Fee for this Application | 100.00 |
| Total Monetary Order | \$3,500.00 |

The landlord is provided with this Order 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 this Order, this Order 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: January 25, 2018

Residential Tenancy Branch