



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRANG HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, ERP, RP, RR, OPRM-DR, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On May 9, 2018, the Tenant applied for a dispute resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to section 46 of the *Act*, seeking emergency repairs pursuant to section 62 of the *Act*, seeking a repair order pursuant to section 32 of the *Act*, and seeking a rent reduction pursuant section 65 of the *Act*.

On May 11, 2018, the Landlord made an Application for a dispute resolution proceeding seeking an Order of Possession of the rental unit pursuant to sections 46 and 55 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to section 67 of the *Act*, and seeking to recover the filing fee pursuant to section 72 of the *Act*.

The Tenant attended the hearing and B.T. attended the hearing on behalf of the Landlord. All in attendance provided a solemn affirmation.

The Tenant testified that he served B.T. the Notice of Hearing package in person with a witness sometime in May but he was unsure of the date. B.T. stated that he was never served in this manner; however, he confirmed that he received this package, that he had reviewed it, and that he was prepared to respond to it. As such, I elected to accept and consider this package served, and continue with the proceeding.

B.T. testified that he served the Tenant the Notice of Hearing package by posting it on the Tenant's door, by placing a Notice of Hearing package under the door, and by placing a Notice of Hearing package in the Tenant's mailbox on May 11, 2018 and he had his wife witness this. However, the Tenant stated that he did not receive the package. I do not find it reasonable that the Tenant would not have received this package based on the multiple manners in which it was served. Based on a balance of probabilities, and in accordance with the deeming provisions in section 90 of the *Act*, I

find that the Tenant was sufficiently served with the Notice of Hearing package and that it was deemed received within three days of May 11, 2018.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- Is the Tenant entitled to have emergency repairs completed?
- Is the Tenant entitled to have a repair order issued?
- Is the Tenant entitled to a rent reduction?
- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

B.T. stated that the tenancy started on March 1, 2015 and rent was currently established at \$880.00 per month, due on the first of each month. A security deposit of \$412.50 was also paid. The Tenant confirmed these details.

B.T. stated that the Notice was posted to the Tenant's door and put in his mailbox as well on May 2, 2018. He also provided a signed proof of service document for each method of delivery. However, the Tenant advised that he never received the Notice. When the Tenant was questioned why his Application included a request to cancel the Notice if he had not in fact received the Notice, he could not provide an explanation and denied including this request in his Application. I find it important to note that in the Tenant's Application, he specified May 4, 2018 as the date that the Notice was delivered and he included the comment, "I have been asking for repairs for the unit and they have not done them I have withheld rent to get theis[sic] done". In conjunction with the Tenant's similar denial of receiving the Notice of Hearing package, I find that this appears to be, more likely than not, a pattern of untruthfulness which causes me to doubt the Tenant's credibility on the whole.

The Tenant stated that he had been withholding rent since February 2018 because there was a sewage leak that seeped into his rental unit and the ceiling had collapsed

more than four years ago. He submitted that B.T. initially came to fix these issues but he was repairing it himself and it was not adequately dealt with, although it was fixed in May 2018. He stated that he gave B.T. the benefit of the doubt over the last four years to fix the problem properly. The Tenant advised that he had buckets set up that would collect leaking water and there was mildew in his rental unit. He also stated that another unit in the rental complex had burned down one and a half weeks ago, and he can still smell the smoke in his rental unit. The Tenant advised that he had pictures of the sewer leak and the buckets outside his door; however, he did not submit them into evidence for this hearing.

B.T. testified that he had no clue about any of the repair issues as he had not been informed of them by the Tenant. He questioned the Tenant's timeline of events as the Tenant had not even been living in the rental unit four years ago. The Landlord stated that a bathroom repair was completed in October 2017 and some drywall was replaced due to this issue; however, he was not aware of any sewage leak.

B.T. submitted that at the beginning of the tenancy, the Tenant had been paying rent in a timely manner; however, he started to pay rent in partial installments and when B.T. brought this up with the Tenant, he became upset. B.T. stated that he outlined the rent amount outstanding on rent receipts. He submitted that in January 2018, a company was hired to collect rent and a review of B.T.'s ledger illustrated that the Tenant was in arrears and as of June 1, 2018, the Tenant owed \$6,043.75.

Analysis

Upon consideration of the evidence before me, I will outline the following relevant sections of the Act that are applicable to this situation. Based on the evidence and testimony, and on a balance of probabilities, these are my reasons for the decision below.

Section 26 of the Act states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the Act, unless the Tenant has a right to deduct all or a portion of the rent. Should the Tenant not pay the rent when it is due, Section 46 of the Act allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the notice. If the Tenant does not do either, the Notice is conclusively presumed to be accepted, the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 33 of the Act outlines the requirements of emergency repairs and states that if a repair meets the definition of being considered an emergency, the Tenant must give the Landlord two attempts by phone to make the repairs in a reasonable time and if the Landlord does not, then the Tenant may initiate the repairs and request reimbursement from the Landlord. In this instance, if the Landlord does not reimburse the Tenant for their expenses, only then may the Tenant deduct the amount of the repairs from rent.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

During the hearing, the Tenant and Landlord provided conflicting testimony regarding the existence of what the Tenant considered was an emergency repair. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find that the Tenant has failed to provide any evidence at all substantiating that there were any repairs that met the definition of an emergency pursuant to section 33 of the Act. Furthermore, the Tenant did not provide any evidence that he contacted the Landlord to have these issues rectified, nor did he provide any evidence that he paid for repairs to be completed and requested that the Landlord reimburse him for such repairs. As such, I am not satisfied that the Tenant established a claim that a situation requiring emergency repairs existed and that he had a legitimate reason for withholding the rent.

Furthermore, other than the Tenant's testimony at the hearing, he has not provided any evidence to substantiate that there were repairs to the rental unit that required the issuance of a repair order. As such, I dismiss the Tenant's Application in its entirety.

With respect to the Landlord's Application for an Order of Possession and a Monetary Order for unpaid rent, as B.T. served the Notice of Hearing package contrary to the allowable rules for service of this document in section 89 of the *Act*, I dismiss the Landlord's portion of the Application with respect to the Monetary Order, with leave to re-apply. However, the undisputed evidence is that the Tenant withheld the rent intentionally, that the rent was not paid in full when it was due, and that the Tenant did not meet any of the applicable criteria that authorized him to withhold the rent under the

Act. In reviewing the documentation, I find that the Landlord's Notice is valid and therefore, the Landlord is entitled to an Order of Possession.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of section 72 of the *Act*, I allow the Landlord to retain this \$100.00 from the security deposit.

Conclusion

I dismiss the Tenant's Application and I grant an Order of Possession to the Landlord **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. The Landlord's Application for a Monetary Order for unpaid rent is dismissed with leave to re-apply.

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: June 22, 2018

Residential Tenancy Branch