



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNR MNDC RR

Introduction

This hearing was convened in response to an application filed April 11, 2018 by the tenant pursuant to the *Residential Tenancy Act* (the *Act*) for orders as follows:

- Cancel a 10 Day Notice to End Tenancy for Unpaid Rent - Section 46
- Compensation for emergency repairs- Section 33
- Compensation for loss – Section 67
- Rent reduction for services or facilities agreed upon but not provided as previously agreed by the parties - Section 65.

The tenant and the landlord's representative (the landlord) attended the hearing and were given a full opportunity to be heard, to present testimony, make submissions, call witnesses and to cross-examine one another. The parties were provided opportunity to settle their dispute to no avail. The parties were apprised that only *relevant* evidence would be considered in the Decision. The parties were given opportunity to present *relevant* testimony, and make *relevant* submissions of evidence. Prior to concluding the hearing both parties acknowledged presenting all of the *relevant* evidence that they wished to present.

The tenant testified personally receiving the landlord's 10 Day Notice for Unpaid rent on April 07, 2018 having an effective date of April 17, 2018. As a result I find they were served with the Notice to End on the received date and the tenant subsequently filed to dispute the Notice within the prescribed time to do so. The landlord acknowledged receiving the tenant's evidence as provided to this proceeding.

Preliminary matters

It must be known that this tenancy is the subject of a settlement between the parties dated January 25, 2018.

It is my decision that I will not deal with all the dispute issues the tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the tenant's primary request to set aside, or cancel the landlord's Notice to End Tenancy for Unpaid Rent and the tenant's claim of emergency repairs and their claim of an existing rent reduction, as these matters are intertwined. However I dismiss the balance of the tenant's claim with liberty to re-apply.

Issues(s) to be Decided

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

Background and Evidence

The parties agree the original agreed rent was set at \$1500.00 per month due in advance on the 1st of each month. In a Decision of the Director dated January 25, 2018 the parties agreed the rent would be reduced by \$100.00 to \$1400.00 if the landlord did not provide the tenant with a properly functioning washer and dryer by February 01, 2018.

The parties agreed the tenant received the requisite washer and dryer as was agreed and the appliances were installed by the delivering entity. However, the tenant testified that the washer leaked at the back therefore the tenant shut off the water supply to prevent problems and notified the landlord. The landlord acknowledged the tenant's request to deal with the leak and notified the installing/delivery entity to return to the unit to attend to the leak. The tenant claims no one arrived and therefore again notified the landlord. Neither party disputes that the landlord provided the tenant with the installer's information so as the tenant could make their own convenient arrangement. The landlord testified they no longer heard of the issue. The tenant disagreed with the landlord's version of events however did not testify as to an alternate course following the leak. The tenant interpreted the leak as entitling them reduction of the rent for February and March 2018, therefore only paid \$1400.00 for each of those months. The tenant claims the owed rent for April in the amount of \$1400.00. The landlord determined the rent reduction did not apply. As a result of all the above the landlord issued the 10 day Notice to End claiming that on April 01, 2018 the tenant owed \$1700.00 comprised of \$1500.00 for April 2018 and \$200.00 of arrears. The tenant testified they paid \$1400.00 toward rent for May 2018, but has not satisfied any of the rent for June 2018.

In accordance with their version of events the tenant claims they only owed \$1400.00 for April 2018 but further dispute that amount as they claim paying for an emergency repair in mid-March 2018, and also for hotel accommodations in mid-February 2018 because BC Hydro shut off the power to the rental unit for 2 days pending a qualified electrician dealing with a case of tampering of the meter. The tenant claims that in mid-March 2018 they paid \$200.00 to a friend to fix the bottom step to their deck as the stair broke. The tenant provided a photo image of a broken step. The tenant claims they contacted the landlord to no avail. The tenant testified being pregnant and unable to access their deck unless the stair was repaired, therefore considered the fix as an emergency repair. The landlord claims the tenant broke the step and was responsible for it's repair. The tenant provided receipts for 2 days hotel accommodations in mid-February 2018 in the sum of \$281.36.

Analysis

The full text of the Act as referenced herein, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

On preponderance of evidence and on balance of probabilities I find as follows.

I find the tenant has not provided sufficient evidence in respect to the claimed leak of the washer. The tenant testified that after their initial attempt to resolve the problem they simply shut off the water. Even if I accept the washer had or has a leak I find it unreasonable that to date, since February 01, 2018, the tenant has not made a more concerted or poignant effort to resolve the concern. I find that the circumstances do not entitle the tenant to rely on their agreement for a rent reduction of \$100.00 for the months of February and March 2018. I further find that the tenant's claimed expenditure of \$200.00 to a friend to repair a stair as unsupported by proof of the expenditure. Even if I accept the tenant paid the \$200.00 I find the repair is not a qualifying *emergency repair* pursuant to **Section 33** of the Act.

I find the tenant may have cause to recover the cost of 2 night's accommodations in a hotel in mid-February 2018; however this is not valid reason to not pay *any* rent 2 months later for the month of April 2018 nor is such an expenditure a qualifying *emergency repair* pursuant to **Section 33** of the Act.

I find **Section 26** of the Act states that rent must be paid as agreed by the parties unless the tenant has a right under the Act to deduct all or a portion of the rent. In this matter I find the tenant did not have just reason or a legal right to not pay the rent according to their tenancy agreement.

As a result of all the above I find the tenant owed \$1500.00 of rent for April 2018 and was obligated to pay a further \$200.00 of rent arrears, for a total of \$1700.00 as stated in the landlord's Notice to End. Therefore, I find the landlord's 10 Day Notice to End with an effective date of April 17, 2018 valid. The tenant did not pay the rent and therefore the tenant's application to dismiss the landlord's Notice to End of this matter is dismissed. **Section 55(1)** of the Act states that if I dismiss the tenant's application I must grant the landlord an Order of Possession.

Conclusion

The tenant's application to cancel the landlord's Notice to end of this matter is dismissed.

The tenant has leave to reapply for recovery of alternate accommodations in the amount of \$281.36.

I grant an Order of Possession to the landlord **effective 2 days from the day it is served on the tenant.** The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the parties.

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 18, 2018

Residential Tenancy Branch