



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JOHNSON TREE FARMS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPUM-DR, CNR, MNDCT, LRE

Introduction

This hearing dealt with applications from the first landlord identified above and from the tenant identifying the second landlord above under the *Residential Tenancy Act* (the *Act*). With the agreement of the parties and in accordance with the powers delegated to me pursuant to the *Act*, I combined the names of the two landlords identified in the respective applications to the cross applications filed by the parties.

The landlord applied for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55; and
- a monetary order for unpaid rent and utilities pursuant to section 67.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they received the 10 Day Notice posted on the tenant's door by the landlord on October 1, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that on

October 17, 2018, they received a copy of the tenant's dispute resolution hearing package sent by registered mail, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. As the tenant also confirmed that they had received the landlord's dispute resolution hearing package, this package was also duly served in accordance with section 89 of the *Act*. The parties confirmed that they handed one another most of their written evidence on November 6, 2018. I find that this evidence was duly served in accordance with section 88 of the *Act*. The landlord testified that their response evidence to the tenant's written evidence was posted on the tenant's door on November 9, 2018. Although the tenant testified that they did not receive this response evidence until November 16, 2018, I find that this portion of the landlord's written evidence was deemed served to the tenant on November 12, 2018, the third day after its posting and seven days in advance of this hearing, pursuant to sections 89 and 90 of the *Act*.

At this hearing, neither party made any submissions with respect to my jurisdiction to consider the matters before me. In the absence of any challenges to my jurisdiction to consider these applications and after reviewing the decision referred to above by another arbitrator appointed pursuant to the *Act*, I find that there are no jurisdictional obstacles to my considering these applications.

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? Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the tenant entitled to a monetary award for losses arising out of this tenancy? Should any other order be issued with respect to this tenancy?

Background and Evidence

The tenant gradually took possession of this 73 year old farmhouse between October and December 2017. By January 2018, the tenant was residing there. Although no written tenancy agreement was created by the landlord, the parties agreed that they had an oral agreement in which the tenant was to pay \$800.00 in monthly rent and \$100.00 for utilities to the landlord each month. The tenant gave undisputed sworn testimony that these payments were to be made "around the beginning of the month."

On June 28, 2018, the landlord provided the tenant with a one month notice to end this tenancy, but did not use the required Residential Tenancy Branch (RTB) approved form

to do so. The tenant's application to cancel that notice to end tenancy was considered by another arbitrator appointed pursuant to the *Act* on September 25, 2018. In the decision rendered by that arbitrator, referenced above, the landlord's one month notice to end tenancy was cancelled because it was not issued on the correct RTB approved form.

The landlord's 10 Day Notice identified \$2,872.68 in rent and utilities owing as of October 1, 2018. This amount included \$611.83 in unpaid rent owing for July 2018, \$666.85 in unpaid rent owing for August 2018, and \$800.00 in unpaid rent owing for each of September and October 2018. As the 10 Day Notice was issued on October 1, 2018, and rent for October 2018 was not yet owing as of that date, the correct amount of unpaid rent identified as owing on the 10 Day Notice at that time was \$2,072.68.

The landlord gave undisputed sworn testimony that no further payments have been made by the tenant towards the unpaid rent and utilities since the issuance of the 10 Day Notice.

The tenant said that they were waiting to receive the outcome of a jurisdictional determination by the arbitrator who heard their application to cancel the one month notice at the hearing on September 25, 2018, before they acted on the landlord's 10 Day Notice. However, the tenant did apply to cancel the 10 Day Notice on October 5, 2018, within the five-day time period for doing so. The tenant also testified that they spoke with a representative of the RTB on October 11, 2018, who informed them that if they had a monetary award against the landlord that was equal to or exceeded the amount requested by the landlord for outstanding rent and/or utilities that they need not pay those amounts to the landlord, pending the outcome of the current hearing.

The landlord originally applied for a monetary award of \$3,272.68. At the hearing, the landlord requested a further \$800.00 for unpaid rent owing for November 2018, and \$100.00 for unpaid utilities owing for November 2018. As there is no question that the tenant was aware that these additional amounts had become owing, I allowed the landlord's request to increase the amount of the monetary award sought from \$3,272.68 to \$4,172.68. Documents entered into written evidence on the landlord's behalf by their legal counsel outlined the monetary award sought in the following terms, plus the oral request for the additional \$900.00 at this hearing:

Item	Amount
Unpaid Rent for July 2018 (\$800.00 - \$188.17 Uncashed Cheque Provided by the Tenant = \$611.83)	\$611.83
Unpaid Rent for August 2018 (\$800.00 - \$139.15 Uncashed Cheque Provided by the Tenant = \$666.85)	666.85
Unpaid September 2018 Rent	800.00
Unpaid October 2018 Rent	800.00
Unpaid November 2018 Rent	800.00
Unpaid Utilities July to November 2018 (\$100.00 x 5 months = \$500.00)	500.00
Total of Above Items	\$4,178.68

In written evidence, and in sworn testimony provided by Landlord KJ at the hearing, the landlord confirmed that there had been a commitment to pay for invoiced materials provided by the tenant for renovations and repairs that the tenant had undertaken on this rental unit. Landlord KJ testified that they accepted that the amount of the landlord's monetary award ought to be reduced by \$783.05 as a means of compensating the tenant for materials purchased for the repair and renovation of this rental home. Landlord KJ testified that they had not committed to compensate the tenant for the tenant's labour in undertaking any repairs or renovations in this rental property.

The tenant's application for a monetary award of \$6,000.00 included the following as outlined in a document they entered into written evidence for this hearing:

Item	Amount
Painting	\$3,400.00
Floor Installation -1/2 of labour (\$2,000.00 - \$1,000.00 = \$1,000.00)	1,000.00
Tenant's Time	1,200.00
Miscellaneous (e.g., Power Washing, Back Door, Front and Back Patio)	400.00
Total Monetary Order Requested	\$6,000.00

In their written evidence and in their sworn testimony, the tenant maintained that they had only undertaken the renovations and repairs for the landlord on this dilapidated farmhouse on the understanding that they would be residing there for an extended

period of time (e.g., a three year tenancy). The tenant testified that when they moved into this rental unit the house needed significant repairs that were far in excess of the claim made by the landlord's counsel that the repairs were cosmetic in nature. The tenant gave undisputed sworn testimony that the house was not sanitary, had mould, graffiti, grime, filth and large cracks in the walls that were exposed to the outdoors. The tenant said that the premises had not been touched in years and that no could have lived in the rental home in the condition it was in when they first started living there. The tenant maintained that the landlord's agreement to pay for invoiced materials the tenant provided to the landlord and the landlord's provision of a worker to assist the tenant with some of the repairs demonstrated that the landlord accepted that the tenant would be compensated for repairs to this home that were badly needed, and which made the premises habitable.

The tenant said that they tried to pay rent in July and August, but that the landlord refused to cash their cheque for those months. The cheques apparently referred to by the tenant were the \$188.17 cheque postdated to July 1, 2018, and \$139.15 postdated to August 1, 2018. The tenant considered these amounts as the correct amount owing after the tenant had deducted amounts for the tenant's labour for the work they did to repair this rental home.

The tenant confirmed that they had not applied to the RTB for authorization to reduce their monthly rent or utilities, to obtain an order for emergency repairs or for a monetary order reducing the amount of their monthly rent for the landlord's failure to provide facilities and services that they agreed to provide at the beginning of this tenancy.

The landlord's counsel noted that the tenant was the person who requested the opportunity to reside in the rental home, and was fully aware of the condition of the rental home from the outset. The landlord's counsel maintained that the monthly rent reflected the condition of the rental home at the beginning of this tenancy and that the landlord's only commitment with respect to repairs was to compensate the tenant for supplies and materials that the tenant purchased to make the premises more suitable for the tenant's housing needs.

Analysis

Section 64(2) of the *Act* reads as follows:

The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

In this case, I find that the tenant arbitrarily withheld rent identified as owing in the landlord's 10 Day Notice without authorization pursuant to the *Act* to do so. In so doing, I have no doubt that the tenant earnestly believed that they had a legal right to withhold rent payments as an offset to the work that they were doing to repair the rental home. However, section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

The tenant applied for a monetary award for reimbursement of their losses, but had no monetary Order issued by an arbitrator appointed pursuant to the *Act* at that time that would enable the tenant to withhold paying rent.

Although only \$2,072.68 of the amount identified in the landlord's 10 Day Notice was owing as of the date the landlord issued that Notice, the tenant was without legal authority to withhold paying this amount after October 9, 2018. Even if I were to accept that \$783.05 was still owed to the tenant for the recovery of direct costs (supported by invoices and receipts) the tenant undertook to repair these premises, this deduction would not satisfy the \$2,072.68 in rent that the tenant owed for rent as of October 1, 2018. For these reasons and in accordance with section 46 of the *Act*, I dismiss the tenants application to cancel the 10 Day Notice.

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 to the landlord an order of possession of the rental unit if

- (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.*

I am satisfied that the landlord's 10 Day Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. As the rent owing as of October 1, 2018 was not paid in full and in accordance with section 55 of the *Act*, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the

tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply.

There is conflicting evidence as to whether the landlord agreed to compensate the tenant for the full cost of any repairs and renovations to this rental home. The landlord testified that they only agreed to pay for material and supplies that the tenant purchased to undertake repairs. In this regard, there is evidence that the landlord has considered receipts and invoices provided by the tenant for the reimbursement of supplies and materials during this tenancy. There is also evidence that the landlord remains willing to accept that payments made by the tenant totalling \$188.17 and \$139.17, as well as further deductions in the amount of \$783.05, demonstrate the landlord's acceptance of responsibility for the tenant's purchase of supplies and materials used in repairing and renovating the rental home.

By contrast, I find that there is no corroborating evidence to support the tenant's assertion that the landlord agreed to compensate the tenant for the time and labour the tenant devoted to repairing and renovating the rental property. The tenant gave sworn testimony that no part of the expenditures claimed in their application could be identified as emergency repairs, nor had the tenant made any written request to the landlord to undertake emergency repairs. While the tenant said that they had been willing to undertake these repairs without compensation on the understanding that this was intended to be a lengthy fixed term tenancy, the tenant produced no written evidence to confirm this understanding of the long-term nature of their oral agreement. The tenant also produced nothing in writing to confirm that the landlord ever agreed to compensate the tenant for the time and labour the tenant expended in repairing and upgrading this rental home. Without such documentation, I find that the tenant is only entitled to receive compensation for the losses they incurred for purchases of supplies and materials used in the repair and renovation of this rental property. For these reasons, I

order the landlord to cash the two cheques issued to the landlord in the amounts of \$188.17 and \$139.15. I further allow the tenant a monetary award in the amount of \$783.05 for supplies and materials purchased by the tenant during the course of this tenancy.

Based on the undisputed sworn testimony and written evidence before me, I find that the landlord is entitled to a monetary award of the claimed unpaid rent and utilities identified above. There is no dispute as to the amount of this rent or utilities, or that the tenant has made payments of \$188.17 and \$139.15 towards those outstanding amounts owing. This results in a monetary award of \$4,178.68.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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.

As this tenancy is ending shortly, I have not considered the tenant's application to restrict the landlord's right to enter the tenant's rental unit.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and utilities, less amounts owing to the tenant:

Item	Amount
Unpaid Rent for July 2018 (\$800.00 - \$188.17 Uncashed Cheque Provided by the Tenant = \$611.83)	\$611.83
Unpaid Rent for August 2018 (\$800.00 - \$139.15 Uncashed Cheque Provided by the Tenant = \$666.85)	666.85
Unpaid September 2018 Rent	800.00
Unpaid October 2018 Rent	800.00
Unpaid November 2018 Rent	800.00
Unpaid Utilities July to November 2018 (\$100.00 x 5 months = \$500.00)	500.00
Less Tenant's Monetary Award	-783.05
Total of Above Items	\$3,395.63

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: November 19, 2018

Residential Tenancy Branch