



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR, ERP, MNDCT, MNRT, OLC, PSF, RR
OPR, MNRL, FFL

Introduction

This teleconference hearing was scheduled in response to an application by both parties under the *Residential Tenancy Act* (the “*Act*”). The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for an order for the Landlord to complete emergency repairs, for monetary compensation, for compensation for the cost of emergency repairs, for an order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* and/or tenancy agreement, and for a reduction in rent due to repairs, services or facilities agreed upon but not provided. The Landlord applied for an Order of Possession based on a 10 Day Notice, for monetary compensation for unpaid rent, and for the recovery of the filing fee paid for this application.

The Tenant, the Landlord and an agent for the Landlord were present for the teleconference hearing. The agent for the Landlord (the “Landlord”) presented testimony and evidence on behalf of the Landlord. The parties confirmed that the Notice of Dispute Resolution Proceeding packages and copies of each party’s evidence were served as required. Neither party brought up any concerns regarding service and therefore I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

As stated by rule 2.3 of the *Rules of Procedure*, claims on an application must be related to each other and unrelated claims may be dismissed. As such, I exercise my discretion to dismiss the Tenant’s claims for an order for the Landlord to comply, for an order for services or facilities to be provided as required by the tenancy agreement or *Act*, and a claim for a reduction in rent.

These claims are dismissed, with leave to reapply and therefore will not be considered in this decision.

This decision will address the dispute over the 10 Day Notice, the monetary claims of both parties and due to the urgent nature of emergency repairs, the Tenant's claim for emergency repairs will be addressed as well. The parties were informed of this at the hearing.

Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

If the 10 Day Notice to End Tenancy for Unpaid Rent is upheld, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to monetary compensation for unpaid rent?

Is the Tenant entitled to monetary compensation?

Is the Tenant entitled to reimbursement of money paid towards emergency repairs?

Should the Landlord be ordered to complete emergency repairs?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement that was submitted as evidence. The tenancy began on January 1, 2012. Currently monthly rent is \$800.00, due on the first day of each month. A security deposit of \$350.00 was paid at the outset of the tenancy.

The parties were also in agreement that a 10 Day Notice was served to the Tenant in person on December 6, 2018. The Landlord submitted a 10 Day Notice dated December 5, 2018 into evidence, but it was confirmed that only the 10 Day Notice dated December 6, 2018 was served to the Tenant on this same day and is therefore the notice in dispute.

The 10 Day Notice dated December 6, 2018 states that rent in the amount of \$1,600.00 is outstanding, with \$800.00 unpaid as due on October 1, 2018 and \$800.00 unpaid as due on December 1, 2018. The effective end of tenancy date was stated on the 10 Day Notice as December 26, 2018.

The Landlord testified that they did not receive any rent for October 2018. Although the Landlord was away during this time, they stated that they had provided the Tenant with bank information for the Tenant to pay the rent. They also stated that the Tenant has had emergency contact information since the beginning of the tenancy as well as email contact information for the Landlord.

The Landlord stated that they received rent in the amount of \$800.00 on November 2, 2018 and therefore November 2018 rent has been paid. They provided further testimony that no amount was paid towards rent owing for December 2018 or January 2019. The Landlords have applied for \$2,400.00 for October 2018, December 2018 and January 2019 rent in the amount of \$800.00 per month.

The Tenant stated that the banking information provided to him while the Landlord was away was incomplete and therefore he was not able to deposit money for October 2018 rent. He also stated that he did not have any contact information for the Landlord or any emergency contact information. The Tenant agreed that on November 2, 2018 he paid \$800.00 to the Landlord which he confirmed was for October 2018 rent. He was in agreement that no money was paid towards rent owing for November 2018, December 2018 or January 2018.

The Tenant provided further testimony that he did not pay rent for three months due to an agreement between himself and the Landlord, as well as due to money he has spent on emergency repairs. The Tenant stated that while the Landlord was away for 6 weeks in September and October 2018, he was to look after the residential property as well as the Landlord's dog. As compensation, the Tenant stated that the Landlord agreed that he would not have to pay rent for 1.5 months. He stated this is why he did not pay rent for November 2018 and would not have had to pay anything until December 15, 2018. The Tenant confirmed that he did not pay any rent for December 2018.

The Landlord stated that they had an arrangement to pay the Tenant \$1,000.00 to look after their dog while away for 6 weeks beginning in September 2018. However, the dog passed away in June 2018 and therefore there was no need for the Tenant to look after any pets while the landlord was away.

The Tenant confirmed that he was aware the dog had passed away in June 2018 and stated that he still looked after the property, such as mowing the lawn. The Landlord was in agreement that they were to pay the Tenant \$20.00 for mowing the lawn and that they therefore owed the Tenant \$80.00 for the period in which they were away, and the Tenant mowed the lawn four times.

The Tenant testified that he did not pay rent for January 2019 due to money for emergency repairs owed to him. The Tenant also applied for \$450.00 for compensation for these emergency repairs. He stated that the stove in the rental unit was 30 years old and had an issue

with the fuse. He took the stove to an appliance shop and it was confirmed that there was an issue, so he purchased a used stove for \$350.00.

The Tenant submitted a receipt dated October 15, 2018 in the amount of \$350.00. The Tenant also submitted a receipt in the amount of \$100.00, dated October 15, 2018. He stated that this was \$50.00 for the labour to install the stove and \$50.00 for the old stove to be removed and disposed of. The Tenant testified that he was not able to contact the Landlord regarding the issue with the stove due to her being out of town and not having any contact information for her.

The Landlord stated that they were not aware that the Tenant had removed the stove and purchased a new one until they received the Tenant's evidence package. They stated that they would have replaced the stove with a brand new one had they been aware of any issues.

The Tenant also applied for \$800.00 in compensation. He stated that \$400.00 is for replacement of an outdoor statue which was damaged when there was yard work being completed outside and the statue was knocked over. He submitted a photo of the broken statue into evidence.

The Tenant also stated that he is seeking an additional \$400.00 compensation which includes paying \$60.00 for bark mulch, completing pruning, weeding, watering and raking outside, mowing the lawn four times while the Landlord was away and renting a lawn mower as there was an issue with the Landlord's lawnmower.

The Tenant submitted a photo of the bark mulch, a receipt for \$60.00 for the lawnmower rental, and a receipt dated August 28, 2018 for the bark mulch in the amount of \$60.00.

The Tenant submitted a letter from his daughter dated January 3, 2018 in which she states she helped the Tenant with spreading the bark mulch and taking care of the yard and lawn. The Tenant also submitted a written statement outlining the events that have occurred and the reasons for his application.

The Landlord testified that they did not ask the Tenant to conduct any work in the yard, other than mowing the lawn and that no further care of the home or residential property was required while they were away. They questioned the receipts submitted by the Tenant as they were handwritten and not issued from companies.

The Landlord also stated that they contacted the company regarding the bark mulch and were not able to receive confirmation that the Tenant purchased bark mulch from this company in the amount of \$60.00. An email exchange with the company was included in the Landlord's evidence stating that they were not aware of this purchase. The Landlord stated that they may be willing to pay for the statue but questioned the value of it and stated that they would need to see it in person to confirm what the statue might be worth.

The Tenant also applied for emergency repairs and stated that this was due to the carpet in the kitchen that needs to be replaced. The Tenant testified that the Landlord is aware of the issue with the carpet. He noted that he has cleaned it six times and has been told it is no longer able to be cleaned and needs to be replaced instead.

The Tenant also stated that when he pulled the stove out he noticed issues with the electrical outlet as well as wires from the dishwasher that are visibly frayed. The Tenant submitted photos of the electrical outlet and the area behind the stove

The Landlord submitted that they were aware of the carpet issues and have had a contractor in to measure the rental unit to complete the carpet replacement. However, they stated that the Tenant did not let the contractor in to complete the work. The Landlord submitted an email from the contractor dated January 12, 2019 in which the contractor states that the Tenant would not allow access to the rental unit.

The Landlord stated that they were not aware of any electrical issues. They submitted that the electrical work in the rental unit was completed by a certified electrician and was approved by the city. They stated that they are willing to complete any repairs needed if notified. The Landlord submitted a receipt showing electrical work completed, dated November 13, 2012.

Analysis

The parties agreed that the Tenant was served in person with a 10 Day Notice on December 6, 2018. Section 46(4) of the *Act* states that a tenant has 5 days in which to dispute the notice or pay the rent owing. As the Tenant filed the Application for Dispute Resolution on December 11, 2018, I find that he applied within the time allowable under the *Act*. As such, the matter before me is whether the reasons for the notice are valid.

Section 46(1) states the following regarding a 10 Day Notice:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The 10 Day Notice states that \$800.00 was unpaid as due on October 1, 2018 and \$800.00 was unpaid as due on December 1, 2018. The Tenant was in agreement that he did not pay October 2018 rent until November 2018 and that no rent was paid for December 2018. Although the Landlord took the November 2, 2018 payment towards November 2018 rent, I do find that this payment was towards the amount outstanding for October 2018 rent.

As the amount paid on November 2, 2018 was put towards October 2018 rent, I find that rent as due on November 1, 2018 and December 1, 2018 was unpaid. The parties also agreed that rent was not paid as due on January 1, 2018.

Therefore, I find that the 10 Day Notice was valid as served on December 6, 2018 with an amount of \$1,600.00 owing at the time. The 10 Day Notice was not cancelled as the Tenant has not paid the outstanding rent.

Although the Tenant has claimed that there was an arrangement for him to not pay rent for 1.5 months while the Landlord was away, the Landlord did not agree that this arrangement had been made. I fail to find sufficient evidence to establish the existence of this agreement. I also note that the Tenant was in agreement that rent has not been paid for three months, which would exceed any existing arrangement to not pay rent for 1.5 months.

I find that the 10 Day Notice dated December 6, 2018 is valid as there was an amount of rent owing that was not paid within 5 days of receipt of the notice. Therefore, the Tenant's application to cancel the 10 Day Notice is dismissed and the notice is upheld. Upon review of the 10 Day Notice, I find it to be in compliance with Section 52 of the *Act* and therefore, pursuant to Section 55(1) of the *Act*, I grant the Landlord a two-day Order of Possession to be served on the Tenant.

As for the amount of rent owing to the Landlord, Section 26 of the *Act* states the following:

26 (1) 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 parties were in agreement that rent in the amount of \$800.00 is due on the first day of each month. The Tenant claimed that he had a right under the *Act* to withhold rent for January 2019 due to money spent on emergency repairs. However, I do not find evidence of the need for emergency repairs. Section 33(1) of the *Act* defines emergency repairs as the following:

- 33 (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

Section 33 of the *Act* further outlines the process for notifying a landlord about the need for emergency repairs and the conditions in which a tenant may complete the emergency repairs if unable to reach the landlord.

The Tenant testified that the stove needed replacing, but there is no evidence before me to establish that this was an urgent repair or necessary for the health and safety of other of the protection of the property. I also do not have evidence that the Tenant attempted to contact the Landlord by phone to notify them of the need for emergency repairs.

As such, I do not find that the Tenant had the right to withhold rent in any amount in January 2019 and instead find that the Landlord is owed rent for January 2019 in the amount of \$800.00.

I also find that based on the above, the Tenant has not established his claim that \$450.00 was spent due to emergency replacement of the stove. I do not find evidence that the Tenant notified the Landlord of the issue with the stove and provided them an opportunity to repair or replace the stove, and I also do not find that this was an emergency.

The Tenant's decision to replace the stove seems to have been made on his own, with no authority to do so from the Landlord. Therefore, the Tenant's claim for compensation for emergency repairs completed is dismissed, without leave to reapply.

The Tenant applied for emergency repairs to be completed, however as above I do not find that the repairs he mentioned meet the definition of emergency repairs. The Tenant testified as to an issue with the electrical outlet and wires behind the stove, as well as stains on the carpet. As I do not find these to be emergency repairs, I do not find it necessary to order the Landlord to complete any emergency repairs.

I find that the Tenant also did not establish his claim for \$800.00 of monetary compensation. While a photo of the broken statue was submitted into evidence, there is no evidence to confirm that the statue has a value of \$400.00 or that it was broken due to a breach of the *Act* by the Landlords.

The Tenant stated that the remaining \$400.00 owing was for yard work, the rental of a lawnmower and the purchase of bark mulch. However, I also find insufficient evidence to confirm that the Landlord asked the Tenant to purchase these items or complete this work. I am also not satisfied as to the amount claimed as the receipts submitted do not add to \$400.00 and no further information was provided to establish the value. Accordingly, I decline to award the Tenant any monetary compensation as I find he did not meet the burden of proof to establish his claims.

As for the Landlords request for monetary compensation in the amount of three months of rent, as the Tenant was in agreement that rent was unpaid, I find that the Landlord is owed a total of \$2,400.00 for rent for November 2018, December 2018 and January 2019.

As stated above, I am not satisfied that the Tenant had any right under the *Act* to withhold rent for three months. As the Landlord agreed that they owe the Tenant \$80.00 for mowing the lawn, this amount will be deducted from the total owed to the Landlord.

As the Landlord was successful in their application, pursuant to Section 72 of the *Act*, I grant the recovery of the filing fee paid in the amount of \$100.00. The Landlord is awarded a Monetary Order in the amount outlined below.

November 2018 rent	\$800.00
December 2018 rent	\$800.00
January 2019 rent	\$800.00
Filing fee	\$100.00
<i>Less amount agreed upon for lawn mowing</i>	<i>(\$80.00)</i>
Total owing to Landlord	\$2,420.00

Conclusion

The Tenant's application is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **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.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$2,420.00** for rent owed for November 2018, December 2018 and January 2019, and for the recovery of the filing fee for this application. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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, 2019

Residential Tenancy Branch