



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR FF / CNR OLC FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Is the landlord entitled to a monetary award for unpaid rent?

Should the landlord be ordered to comply with the Act?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

The tenancy began on September 31, 2017 and the current monthly rent is \$1880.00 payable on the 1st day of each month.

The landlord testified the tenant failed to pay the \$480.00 out of the \$1880.00 rent payable on January 1, 2019. The landlord served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice and has not paid it since. The tenant has paid rent in full for February 2019 and was issued a receipt for use and occupancy only.

The tenant acknowledged receipt of the 10 Day Notice on January 4, 2019. The tenant acknowledged that he did not pay the full amount of the arrears indicated, within five days, of receiving the Notice.

The tenant testified that he withheld the \$480.00 as the landlord was not complying with the emergency repair provisions of section 33 of the Act. The tenant argues the rental unit required urgent repairs to the heating system. The tenant testified that he provided the landlord an opportunity to do the repairs and after repeated failed attempts he obtained a quote on January 4, 2019 and had the repairs performed on January 9, 2019. The tenant submitted an invoice for the repair work in the amount of \$270.11. The tenant claims the rest of the amount withheld was for his time to supervise the work.

Analysis

I am satisfied that the tenant received the 10 Day Notice on January 4, 2019.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires 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.

Section 33 of the Act describes “emergency repairs” as those 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 purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit

- the electrical systems
- in prescribed circumstances, a rental unit or residential property

Subsection 33(3) of the Act sets out that a tenant may make emergency repairs where emergency repairs are needed, the tenant has made at least two attempts by phone to contact the landlord, and the tenant gave the landlord a reasonable amount of time to make the repairs.

If a tenant has attempted unsuccessfully to have the landlord complete emergency repairs, subsection 33(5) of the Act requires a landlord to reimburse a tenant for amounts paid for emergency repairs if, the tenant claims reimbursement from the landlord and provides the landlord a written account of the emergency repairs accompanied by receipts for the amounts claimed. As per subsection 33(7) if the landlord does not reimburse the tenant, then the tenant may deduct the amount from rent or otherwise recover the amount.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenant acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent. I make this finding as the tenant made a deduction from the rent payable for January 1, 2019 before even having the repairs performed. The tenant did not have the repairs performed until January 9, 2019. Subsection 33(5) requires a landlord to reimburse a tenant for amounts paid for emergency repairs. Subsection 33(7) authorizes a tenant to deduct the amount from rent if the landlord does not reimburse the tenant. The utilization of the wording “amount paid” in subsection 33(5) and “reimburse” in subsection 33(7) implies that the authorization to deduct after the tenant has incurred the expense for the repairs not in order to have the repairs completed on a future date. The tenant in this case did not provide the landlord with any opportunity to reimburse the tenant for the repairs before deducting the amount from the rent.

I make no findings on whether or not the repairs performed by the tenant were required or whether they were emergency repairs under this section and whether or not the landlord failed to make these repairs in a timely manner.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord’s notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord’s notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act. As the tenant has paid rent for use and occupancy for February 2019, the order of possession is effective February 28, 2019.

I accept the landlord’s claim for outstanding rent of \$480.00.

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 for a total monetary award of \$580.00.

As this tenancy has come to an end, I make no orders for the landlord to comply with the Act. This portion of the tenant's application is dismissed.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the filing fee paid for his application.

Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on February 28, 2019**. 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.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$580.00. 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: February 21, 2019

Residential Tenancy Branch