



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OLC, MNDCT, MNRT, RR, FFT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent, for an Order requirement the Landlord to comply with the *Residential Tenancy Act* (Act) or the tenancy agreement; for a rent reduction, for a monetary Order for money owed or compensation for damage or loss; to recover the cost of emergency repairs, and to recover the fee for filing this Application for Dispute Resolution.

This hearing was scheduled to commence at 11:00 a.m. on April 30, 2019. I dialed into the teleconference at 11:01. The Agent for the Landlord dialed into the teleconference prior to that start time. The Tenant had not joined the teleconference by the time it was terminated at 11:22 a.m.

The web portal was not functioning at the time of this hearing so I was unable to confirm whether the Tenant was present on the basis of the web portal. I did ask the Tenant to identify himself on at least three occasions; however he did not identify himself at any point during the hearing. I confirmed on the Notice of Hearing that the correct telephone numbers and access code had been provided.

The Agent for the Landlord stated the Landlord received the Tenant's Application for Dispute Resolution, the Notice of Hearing, and evidence, via registered mail, sometime in the middle of March of 2019.

On April 12, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on April 12, 2019. The Agent for the Landlord cited a Canada Post tracking number which corroborates this testimony. On the basis of the testimony and in

the absence of evidence to the contrary I find that this evidence was served to the Tenant and it was accepted as evidence for these proceedings.

This hearing proceeded in the absence of the Tenant.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

As the most urgent issue in dispute is possession of the rental unit, I will only consider issues related to the application to set aside a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities; the application to recover the cost of emergency repairs, and the application to recover the fee paid to file this Application.

The Tenant's application for a rent reduction and for a monetary Order for money owed or compensation for damage or loss is dismissed, with leave to re-apply.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, be set aside?

Is the Tenant entitled to a monetary Order for making emergency repairs to the rental unit?

Background and Evidence

The Agent for the Landlord stated that:

- the tenancy began on October 23, 2017;
- rent was due by the first day of each month;
- when this tenancy ended rent was \$4,160.00 per month;
- rent has not been paid for March of 2019;
- on March 12, 2019 the Tenant informed the service manager, via email and text message, that the sauna timer was not working;
- the sauna timer prevented the Tenant from using the sauna;
- the sauna timer was not dangerous if it was not in use and did not need to be urgently repaired;

- the Tenant did not inform the Landlord of the need to repair the sauna timer a second time;
- on March 13, 2019 the Tenant provided the Landlord with an invoice for repairing the sauna timer;
- the invoice for the timer repair is from the Tenant's company;
- the Landlord has not compensated the Tenant for repairing the timer;
- on March 08, 2019 the Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit; and
- the Notice to End Tenancy declared that the Tenant must vacate the rental unit by March 18, 2018.

The Tenant filed an Application for Dispute Resolution seeking to dispute the Ten Day Notice to End Tenancy on March 08, 2019, in which he declared that he received the Notice on March 08, 2019.

Analysis

Section 33 of the *Act* reads:

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.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Even if I accepted that the need to replace the sauna timer constituted an “emergency repair”, I would conclude that the Tenant did not have the right to repair the timer, in part, because the Tenant did not comply with section 33(3)(b) of the *Act*, which required him to notify the Landlord of the need for emergency repairs on at least two occasions. This conclusion is based on the Agent for the Landlord’s undisputed testimony that the need for repair was reported on only one occasion, which was March 12, 2019.

My conclusion that the Tenant did not have the right to repair the timer was also based in part, on my conclusion that the Tenant did not comply with section 33(3)(c) of the *Act*, which required him to give the Landlord reasonable time to make repairs after they are reported. This conclusion is based on the Agent for the Landlord’s undisputed testimony that the invoice for the repairs were provided to the Landlord on March 13, 2019. In my view, presenting an invoice one day after notifying the Landlord of the need for the repair does not provide the Landlord with a reasonable amount of time to make the repair.

As the Tenant made the repairs before providing the Landlord with a reasonable amount of time to make the repairs, I find that he is not entitled to compensation for repairing the sauna timer, pursuant to section 33(6)(a) of the *Act*. I therefore dismiss his

application for emergency repairs and I find that he did not have the right to withhold rent money in compensation for repairing the sauna timer.

Section 26(1) of the *Act* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. On the basis of the testimony of the Agent for the Landlord and the absence of evidence to the contrary, I find that the Tenant did not pay rent for March of 2019. As I have concluded that the Tenant did not have the right to withhold rent on the basis of the repair to the sauna timer, I find that the Tenant remained obligated to pay all of the rent that was due on March 01, 2019.

Section 46(1) of the *Act* stipulates, in part, that a landlord may end a tenancy if the tenant fails to pay rent when it is due. As the Tenant did not pay all of the rent that was due on March 01, 2019, I find that the Landlord had the right to end the tenancy pursuant to section 46(1) of the *Act*.

On the basis of the undisputed evidence I find that the Tenant received a Ten Day Notice to End Tenancy for Unpaid Rent on March 08, 2019. I therefore find that the Landlord has satisfied the legislative requirements to end this tenancy pursuant to section 46 of the *Act* and I dismiss the Tenant's application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent.

Section 55(1) of the *Act* stipulates that iff 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

I find that the Tenant has failed to establish the merits of his Application for Dispute Resolution and I dismiss his application to recover the fee for filing this Application.

Conclusion

The Tenant's application to cancel a Ten Day Notice to End Tenancy for Unpaid Rent is dismissed.

The Landlord is granted an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, 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: April 30, 2019

Residential Tenancy Branch