



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, CNC, RR,

### Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application filed on June 20, 2019, is seeking an order as follows:

1. For an order of possession.

The tenant's application filed on July 3, 2019, is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice", issued on June 2, 2019;
2. For a monetary order for the cost of emergency repairs;
3. For a rent reduction; and
4. To recover the cost of filing the application.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

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 indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice and the cost of emergency repairs as the evidence for withholding rent is based on this issue. The balance of the tenant's application is dismissed, with leave to reapply.

In this case, the tenant's evidence was incorrectly labelled by the Residential Tenancy Staff, as the tenant did not provide a covering letter when they left it at the Service BC

Office. The 82 pages of evidence in the digital file, filed on August 8, 2019, is the tenant's, not the landlord. I am unable to correct this error in the digital file.

Counsel objects to the tenant's evidence being considered, as it was not received 14 days before the hearing. In this matter the tenant is both the application and the respondent as each party has filed their respective application. There are different time limits for each applicant and respondent.

As the issue for me to determine is whether the tenant had the authority to withhold rent due to emergency repairs for June rent, I find it reasonable only to consider the evidence that is directly related to emergency repairs, as I must do so to determine if the tenant had the authority under the Act to withhold the rent. Any evidence not referred to in my decision was not considered.

#### Issue to be Decided

Should the Notice be cancelled?

Should the tenant be entitled to recover the cost of emergency repairs?

#### Background and Evidence

Based on the testimony of the landlord and the tenant, I find that the tenant was served with the Notice for non-payment of rent on June 3, 2019. The notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The tenant testified that they withheld rent because they were entitled to do so because of emergency repairs that they had to do to the rental unit.

The tenant testified that there were three floods in the rental unit.

The tenant testified the first flood occurred sometime towards the end of May 2019, and was caused by the pipe underneath the bathroom sink breaking causing water to go onto the floor. The tenant stated that it only leaked if they but water down the sink. The tenant stated that they paid the amount of \$294.79.

The tenant testified that the second flood was from the bathtub pipe breaking causing water to go onto the floor. The tenant stated they paid the amount of \$326.84.

The tenant testified that the third flood was from the toilet seal leaking. The tenant stated they paid the amount of \$116.12.

The tenant testified that on each occasion they contacted the landlord twice and the repairs were made either on the day the incident occurred or on the next day.

Counsel for the landlord questions the credibility of the tenant, as the receipts filed in evidence appear to be questionable as they are not dated. They do not provide the name or telephone number of the service provided and there are no details of what work was completed. Filed in the landlord's evidence are copies of the original receipts given to the landlord by the tenant, which are attached as an exhibit to the statutory declaration of GP.

Counsel submits that the receipt the tenant has provided in their late evidence is not consistent to the original receipts given by the tenant.

Counsel submits the tenant has not met the burden of proof that they had the right to withhold rent under the Act.

The tenant argued that they had lost their original receipts and had to get another copy, so the company placed it all on one receipt. Filed in evidence is a copy of a receipt issued in July 2019

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

### **Emergency repairs**

- 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.

(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.

(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.

In this case the tenant is relying upon section 33(7) of the Act. However, I find the tenant's evidence questionable. The tenant was unable to provide the actual dates of when the emergency repairs occurred. Further, each repair the tenant has indicated is not urgent as the alleged flooding only happened when they turned the water on. While I accept this may have been inconvenience, if in fact true. I find this does not meet the definition of an emergency repair.

Further, I do not accept the receipts as authentic. The first receipts do not provide the name, addresses or telephone number of the service provider. They do not provide any details of the work that was completed.

The second receipt the tenant provided in their late evidence, is one single invoice, no address or telephone number of the service provided. Dates or details of work completed. It lists a total and indicates it was paid in cash. The invoice also says the following "I put everything on one bill for you so it is easier for you to take to RTB".

This comment make no sense because if the tenant truly lost the original invoices the service provider could have provided a copy of the actual receipt as they are required to keep those original records for business purpose. I find it more likely than not the receipts filed in evidence have been falsely created. **The tenant is cautioned providing false evidence at a hearing can have serious consequences.**

Base on the above, I find the tenant has failed to prove that they have met their obligation under section 33 of the Act. I find the tenant was not entitled to withhold rent for June 2019.

I find the Notice valid; I find the tenancy legally ended on June 12, 2019, in accordance with the Act.

As the tenant has not paid occupancy rent for July or August 2019, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. **The tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application to cancel the Notice and for the cost of emergency repairs is dismissed. The landlord's application for an order of possession is granted.

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: August 16, 2019

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Residential Tenancy Branch