



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNRT, RR, RP, MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) and Amendments to the Application (the “Amendments”) that were filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”);
- Cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”);
- Compensation for the cost of emergency repairs in the amount of \$1,567.77;
- A rent reduction for repairs, services, or facilities agreed upon but not provided;
- An order for the Landlord to complete repairs to the unit, site or property;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s advocate (the “advocate”), and the Landlord, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

Amendment

The Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the original Application and notice of the hearing and the documentary evidence before me from the Tenant in relation to the original Application. Although the Landlord denied receipt of the Tenant's Amendment seeking to dispute a One Month Notice served after the Application was filed, they stated that they were aware that the Tenant intended to dispute the One Month Notice in this hearing and submitted documentary evidence in relation to the One Month Notice for my review. As a result, I find no prejudice to the Landlord in accepting the Tenant's Amendment and I have amended the Application accordingly.

Landlord's Evidence

Although the Landlord acknowledged serving their documentary evidence on the Tenant outside of the timelines established in the Rules of Procedure, the Tenant acknowledged receipt and ultimately the parties agreed to the acceptance of this evidence in the hearing. As a result, I have accepted the Landlord's evidence for consideration in this matter.

Settlement

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Severed Claims

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice and a 10 Day Notice, I find that the priority claims relate to whether the tenancy will continue or end, the payment of rent,

and whether the Tenant was entitled at the time rent was withheld or deducted, to withhold or deduct \$1,567.77 of the rent. I find that the other claims made by the Tenant are not sufficiently related to the notices to end tenancy or whether the Tenant was entitled to withhold or deduct any portion of rent at the time rent was withheld. As a result, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- A rent reduction for repairs, services, or facilities agreed upon but not provided;
- An order for the Landlord to complete repairs to the unit, site or property; and
- Compensation for monetary loss or other money owed.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of a 10 Day Notice, cancellation of a One Month Notice, compensation for the cost of emergency repairs, and recovery of the filing fee.

One Month Notice

The Tenant and their Advocate stated that the One Month Notice was submitted at the time the Amendment was filed, however, a copy of the One Month Notice was not in the documentary evidence before me. In the hearing I had the parties confirm the details of the One Month Notice and advised them to submit a copy for my consideration. I advised the parties that if a copy was not received, I would render the decision in its absence.

On May 1, 2020, the date of the hearing, both parties submitted a copy of the One Month Notice through the online dispute resolution system for my review. As a result, I accepted these documents for consideration in this matter.

Late Evidence Excluded

Although both parties also submitted additional documentary evidence for my review after the close of the hearing, as this late documentary evidence was not requested or permitted by me, the hearing was closed, and the timelines for the submission of evidence had long passed, I excluded this additional late documentary evidence from consideration.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the 10 Day Notice or the One Month Notice?

If the Tenant's Application seeking cancellation of the 10 Day Notice or the One Month Notice, or both, are dismissed, is the Landlord entitled to an Order of Possession for the rental unit pursuant to section 55 of the *Act*?

Was the Tenant entitled to compensation for the cost of emergency repairs and/or was the Tenant entitled to withhold rent for the cost of emergency repairs completed pursuant to section 33 (7) of the *Act*?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that rent in the amount of \$1,100.00 is due under the tenancy agreement and although there was some dispute about the day on which rent has been due at various points during the tenancy, the parties agreed that rent is currently due on the first of each month and that it has been due on the first of the month for some time.

The parties agreed that the Tenant withheld February rent without the Landlord's consent and that the Landlord subsequently served the Tenant with a 10 Day Notice on February 25, 2020, by posting it to the door of the rental unit. The Tenant acknowledged receipt on February 25, 2020, and filed their Application seeking to dispute the 10 Day Notice that same day.

The 10 Day Notice in the documentary evidence before me is signed and dated February 25, 2020, has an effective date of March 6, 2020, and states that as of February 1, 2020, the Tenant owed \$1,100.00 in outstanding rent.

The Tenant stated that on January 23, 2020, there was a flood in the basement of the rental unit as the result of failed weeping tiles and defective perimeter drains, or a clogged grey water tank, or both, and that the Landlord had refused to attend the rental unit to deal with the flood and instead authorised them over the phone to deal with the flood as they saw fit. The Tenant stated that they are a contractor and that they therefore hired their employees, as well as a plumbing company, to assist them in dealing with the flood and the perimeter drains, at a cost of \$1,576.77. The Tenant stated that they gave the Landlord their invoice for the work completed, which included

the cost of the plumbing company, and requested that the Landlord reimburse them. The Tenant stated that when the Landlord refused to reimburse them for these costs, they deducted it from the rent, and as a result, no rent for February 2020 was paid.

The Landlord acknowledged that the Tenant contacted them by phone and text message on January 23, 2020, regarding a flood but denied authorizing the Tenant to complete any repairs or failing to attend the rental unit. The Landlord stated that they and a witness, whose statement has been submitted, attended the rental unit with them within two hours of the Tenant's call, that when they attended the basement floor was wet but there was no standing water in the basement and as a result, no further action was required. The Landlord stated that the Tenant was not present when they arrived, but an employee of the Tenant was pumping grey water from a garbage can into the creek and was asked by the Landlord to stop. The Landlord stated that they then diverted the gutters away from the house.

The Landlord stated that the land on which the rental unit is located has a high water table, and as a result, it has periodically flooded over the years they have owned the property. The Landlord stated that this is why the area the Tenant refers to as the basement, which the Landlord categorized as a high ceilinged crawl space, is not suitable for occupation. The Landlord stated that there is a ditch on the property to assist with drainage, but that the Tenant has filled it with refuse from their contracting business. The Landlord acknowledged that they authorized the Tenant to hire a plumbing company on or about January 29, 2020, to assess the condition of the perimeter drains, but stated that the Tenant never actually provided them with a copy of the invoice from that company, only their own invoice, and as a result, they never reimbursed the Tenant for this amount.

The Tenant acknowledged that they never previously provided the Landlord with a copy of the plumbing invoice, as the cost associated with it was listed in their own invoice, but stated that the Landlord should now have a copy as it forms part of their documentary evidence. The Landlord did not deny receiving a copy of the invoice as part of the evidence package for the hearing.

The Landlord stated that subsequent to the 10 Day Notice, a One Month Notice was personally served on the Tenant on March 18, 2020, and the Tenant acknowledged receipt on that date in the hearing.

The One Month Notice in the documentary evidence before me is signed and dated March 18, 2020, has an effective date of April 30, 2020, and lists the following grounds for ending the tenancy:

- The Tenant is repeatedly late paying rent;
- There are an unreasonable number of occupants in a rental unit;
- The Tenant or a person permitted on the residential property by the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant;
- The Tenant or a person permitted on the residential property by the Tenant has put the Landlord's property at significant risk;
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has caused or is likely to cause damage to the Landlord's property;
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord;
- The Tenant has not done required repairs to damage to the rental unit or residential property;
- The Tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after the Landlord gave written notice to do so; and
- The Tenant has assigned or sublet the rental unit without the Landlord's written consent.

Under the details of cause section of the One Month Notice it states that the Tenant has been late with rent every month, the Tenant has sublet an outbuilding and an R.V. site without the Landlord's consent, the Tenant evicted the Landlord's father from a storage unit, the Tenant "borrowed" tools without consent, the Tenant has started renovations and wants to deduct rent for this purpose, and the Tenant has pumped the septic tank into the creek. In the hearing the Tenant acknowledged personally receiving the One Month Notice on March 18, 2020.

In the hearing the parties agreed that there was no breach of a material term as there is no written tenancy agreement and the Landlord never served the Tenant with the required notice of a breach of material term.

The Landlord stated that the Tenant engaged in illegal activity when they pumped the septic tank or grey water into the creek, by dumping hazardous construction materials on the property, by allowing someone to live in an outbuilding without a sewer, by taking their possessions from a locked workshop without their consent, by evicting their father from a storage unit on the property without permission and by growing cannabis on the property. The Landlord did not submit any documentary evidence of the laws broken or provide me with any details of the applicable laws. The Tenant denied that any illegal activity has occurred on the property and stated that it was actually the Landlord who removed their father's belongings from the storage unit as they have a difficult relationship. The Tenant also stated that they have always been permitted use of the workshop and to borrow tools stored there.

The Landlord stated that the Tenant has sublet an outbuilding, namely a mobile home on the property which has never been connected to electricity, water or sewer facilities, without their consent and that they also allowed someone to park an R.V. on the property without their consent. Further to this, the Landlord argued that this constitutes an unreasonable number of occupants on the property.

The Tenant stated that they have not sublet the property as they still reside there, and that the Landlord was aware of and gave permission for them to allow someone to temporarily reside in the mobile home and for someone to park their R.V. on the property. The Tenant stated that the Landlord was even planning on connecting power for the R.V. but that the power was never connected, and the parties therefore moved their R.V. to an alternate location in January of 2020, approximately one year after moving it onto the property. In any event, the Tenant stated that person in the mobile home stayed there only a few days and that at no time were there an unreasonable number of occupants on the property or in the rental unit.

Although the parties agreed that there was a history of late rent payment, they disagreed about the number of rent payments and whether the Tenant was authorised to pay the rent late. The Landlord stated that the Tenant has only ever paid rent on time 3-4 times and has never been permitted to pay the rent late. The Tenant stated that they have paid rent late only 5-10 times over a 3 year period, and that the Landlord has always been forewarned and was ok with the late payments. As a result, the Tenant argued it should not be a reasonable ground for ending the tenancy.

The Landlord stated that there is another occupant on the residential property, and that the Tenant or a person permitted on the residential property by the Tenant has engaged

in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of that occupant. The Landlord referred to an incident wherein they claim that the occupant permitted by the Tenant to reside in the mobile home dumped sewage on the property as there is no washroom in the mobile home, and that the other occupants pet was contaminated by this sewage. The Tenant denied that they or the occupant of the mobile home had anything to do with this incident as the occupant was using their washroom during the short duration of their stay on the property.

Although the Tenant agreed that they keep construction waste from their contracting business on the property, they denied the Landlord's allegation that this constitutes illegal activity and stated that the Landlord has always granted them permission to do this. The Tenant stated that the construction materials are brought to the property and sorted into orderly piles, that the burnable materials are burned, and that the remaining materials are taken to the dump.

Although there was agreement by the parties that the Tenant was to do some work on the property throughout the tenancy either in compensation for paying rent or in exchange for the lower amount of rent agreed to in the tenancy agreement, there was no agreement between them about exactly what work was to be done or when. The Landlord stated that the Tenant had not complied with this agreement as they have not done any repairs or improvements, and have failed to maintain the property, however, the Tenant denied these allegations.

Both parties submitted documentary evidence in support of their testimony. The Tenant submitted a self-authored written statement, a statement from the occupants of the R.V., numerous photographs, a copy of their invoice for flood repairs, a copy of the plumbing invoice, copies of text messages with the Landlord, copies of emails sent from the Advocate to the Landlord, and witness statements from two employee of the Tenant present during flood repairs.

The Landlord submitted photographs, copies of text messages with one of the R.V. occupants, a self-authored written statement, a statement from the witness present on January 23, 2020, a statement from the other occupant of the property, copies of text messages related to the mobile home occupant/incident, a character reference from a previous tenant, a witness statement from a realtor regarding construction waste, a witness statement regarding the tenancy agreement and garage/workshop usage, copies of text messages related to late rent and various other documents relating to what the Landlord believes the Tenant owes them.

Analysis

The Tenant acknowledged receipt of the 10 Day Notice on February 25, 2020, and as a result, I find that the Tenant was served with the 10 Day Notice on this date for the purpose of the *Act*. I also find that the Tenant filed their Application seeking to dispute the 10 Day Notice within the legislative timeframe set out under section 46 (4) of the *Act*.

Section 26 of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

In the hearing the parties agreed that rent in the amount of \$1,100.00 is due on the first day of the month and that no rent has been paid for February of 2020. In the hearing the Tenant stated that they withheld February rent as they were entitled to compensation from the Landlord in the amount of \$1,567.77 for emergency repairs completed and the cost of a plumber hired with the Landlord's approval, to check the perimeter drains. However, the Landlord denied that the Tenant was entitled under the *Act* to complete emergency repairs, and although the Landlord stated that they granted the Tenant permission to hire the plumber, the Tenant never provided them with a copy of the invoice from the plumbing company, only their own invoice, and as a result, they were not compensated for this amount or authorised to withhold this amount from rent.

Section 33 of the *Act* contains very specific definitions for what constitutes an emergency repair, and very specific requirements for what actions need to be taken in order for a tenant to complete emergency repairs and either be reimbursed for these repairs or deduct these costs from rent. As the Tenant is the one alleging that they were authorised to deduct the cost of repairs under section 33 of the *Act*, I find that it was therefore the Tenant's responsibility to satisfy me, on a balance of probabilities, that they had this authority.

In the hearing the parties agreed that the Landlord was contacted on January 23, 2020, in relation to a flood, and although the Tenant argued that the Landlord refused to attend the rental unit and authorised them to take action, I am not satisfied this was the case. Witness accounts submitted by both the Tenant and the Landlord show that the Landlord attended the rental unit on January 23, 2020, in relation to the flood. As a result, I am not satisfied by the Tenant that the Landlord refused to either attend the

rental unit or to deal with the flood, or that they were verbally authorised by the Landlord or otherwise authorised under the *Act*, to commence emergency repairs.

Further to this, I am not satisfied that the work completed by the Tenant and the Tenant's employees at the rental unit meets the definition of emergency repairs under the *Act*. In the hearing the parties disagreed about the cause of the flood. The Landlord stated that it was the result of the high water table in the area and the Tenant stated that it was either a result of faulty weeping tiles and perimeter drains or a clogged grey water tank, or possibly both. Neither party submitted evidence which I find reliably and conclusively shows what the cause of the flooding was. Based on the above, I find that the Tenant has failed to satisfy me that it is more likely than not, that the flood was caused by major leaks in pipes or the roof, or damaged or blocked water or sewer pipes or plumbing fixtures. As a result, I am not satisfied that even if the Tenant was authorised under the *Act* to complete emergency repairs, that the repairs actually completed by the Tenant and the Tenant's employees, qualify as emergency repairs.

As a result, I am not satisfied that the Tenant was either entitled to withhold rent for the recovery of the cost of any repairs completed by them or their employees pursuant to section 33 (7) or that the Tenant is otherwise entitled to reimbursement of the \$1,567.77 sought, pursuant to section 33 (5) of the *Act*, except as stated below.

Although the Landlord stated that they granted the Tenant permission to hire the plumbing company, the parties agreed that the Tenant did not provide the Landlord with a copy of the actual invoice from the plumbing company until their Notice of Dispute Resolution Proceeding Package was served on the Landlord in relation to this hearing. As a result, I find that the Tenant was not authorised to deduct the amount of this invoice from rent as they did not comply with section 33 (5) (b) of the *Act*. However, As the Landlord agreed that the Tenant was authorised to hire the plumbing company and the plumbing invoice was contained in the Notice of Dispute Resolution Proceeding Package served on the Landlord, I find that the Tenant is entitled to recovery of the \$199.50 set out in the invoice. Pursuant to section 67 of the *Act*, I therefore grant the Tenant a Monetary Order in the amount of \$199.50.

As stated above, I am not satisfied that the Tenant was entitled to deduct any amount of rent under the *Act* for the purpose of emergency or other repairs at the time that it was deducted, and as a result, I find that the Tenant was obligated to pay \$1,100.00 in rent on February 1, 2020, as required by their tenancy agreement.

Based on the above, and as the parties agreed in the hearing that no rent has been paid for February 2020, I therefore dismiss the Tenant's Application seeking to cancel the 10 Day Notice without leave to reapply. As the 10 Day Notice is signed and dated by the Landlord, gives the address for the rental unit, states the effective date for the notice and the grounds for ending the tenancy, and is in the approved form, I find that it complies with section 52 of the *Act*. As a result, I find that the Landlord is entitled to an Order of Possession for the rental unit pursuant to section 55 (1) of the *Act*. As the effective date of the 10 Day Notice has passed, the Order of Possession will be effective **two (2) days after service on the Tenant**.

As the Tenant was largely unsuccessful in their Application, I decline to grant them recovery of the filing fee.

As I have already found that the tenancy is ended in accordance with the 10 Day Notice, I find it unnecessary to render a decision in relation to the One Month Notice. I have therefore made no findings of fact or law in relation to the validity of the One Month Notice.

Conclusion

The Tenant's claims seeking cancellation of the 10 Day Notice, recovery of \$1,368.27.00 in repair costs associated with a flood and recovery of the filing fee are dismissed without leave to reapply.

The Tenant's claims for a rent reduction for repairs, services, or facilities agreed upon but not provided, an order for the Landlord to complete repairs to the unit, site or property; and compensation for monetary loss or other money owed were dismissed with 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. 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 and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$199.50. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: May 13, 2020

Residential Tenancy Branch