Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, RR, MNRT, OLC, RP, ERP

Introduction

The tenants (hereinafter the "tenant") filed an Application for Dispute Resolution on February 16, 2021 seeking the following:

- an order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- compensation for monetary loss;
- compensation for cost of emergency repairs they made during the tenancy;
- a reduction in rent for repairs, services or facilities agreed upon but not provided;
- the landlord's compliance with the legislation and/or the tenancy agreement;
- repairs made to the unit, after their written request;
- emergency repairs for health or safety reasons.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on May 20, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matters

The tenant provided the Notice of Dispute Resolution to the landlord via registered mail. This was on February 25, 2021, as shown in the receipt and separate tracking information for the landlord provided in the tenant's evidence.

At the outset of the hearing, the tenant provided that they delivered packages of their evidence to the landlord, in person when they handed documents directly to the

landlord. They stated the landlord took the evidence and then "let it drop to the ground", for three separate pieces on three separate occasions. This occurred when the landlord visited the rental unit. The landlord denied that this was the case and stated they did not receive evidence from the tenant.

I make a credibility judgement to determine that the tenant personally served their evidence for this hearing to the landlord; however, I advised the parties that I would carefully review any reference to individual pieces of evidence that the tenant provided to the Residential Tenancy Branch. If I were to determine that individual pieces required disclosure, I would make a provision for that in the hearing or by way of an adjournment as provided for in the *Residential Tenancy Branch Rules of Procedure.* On this basis, the hearing proceeded.

After preliminary hearing protocol matters, I advised the parties that the primary issue was that of the validity of the 10-Day Notice issued by the landlord on February 5, 2021. The *Residential Tenancy Branch Rules of Procedure* Rule 2.3 provides that I may dismiss unrelated claims with or without leave to reapply. Rule 6.2 also provides authority for my severing of issues.

In line with the *Rules*, I decline to hear the tenant's claims involving the need for repairs, the landlord's compliance with the *Act* and/or tenancy agreement, a reduction in rent, and their claim for monetary compensation. These issues are dismissed; however, the tenant has leave to reapply on each of these points.

Because of the tenant's request for clarification, I advised the parties I was not audio recording the hearing. There is no recording and no transcript of the hearing. As per Rule 6.11, I advised the parties to not record the hearing.

In a written submission, the landlord raised the issue of the tenant's employment facilitating their additional knowledge in matters concerning residential tenancy. In particular, their employment with the Residential Tenancy Branch would place them in a conflict of interest situation and present an unfair advantage where "[they] would have access to all the information and the documents proceedings for this case" and "[They] may use [their] contacts to get the favor and misuse the system."

With this in mind I clarified with the tenant by direct questions that I have no relation to them, and no personal knowledge of the circumstances in this tenancy. With this clarification, I verified that the landlord was comfortable proceeding with the hearing. Under oath, the tenant stated they have no system access within the office that would

enable them to access other materials outside of the normal work protocol and authorizations. The landlord responded to say they had no concerns about the hearing process and trusted the system in place for this dispute resolution process. Once this was established, the hearing continued.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel the 10-Day Notice, pursuant to s. 46 of the *Act*?

If the tenant is unsuccessful in their Application, is the landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Background and Evidence

The landlord provided a copy of the tenancy agreement in their evidence for this hearing. The tenant presented that they had never before seen a completed copy of the agreement before this evidence was disclosed to them. This was despite their requests to the landlord. The tenant conceded to the basic terms of the agreement: the rent amount of $2,200 per month, for the tenancy that started on October 22, 2020.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice") on February 5, 2021. This gave the final move-out date to the tenant of February 21, 2021. The landlord provided this was for a rent amount of $410.53 that was due on February 1, 2021.

The landlord provided a ledger for the period Oct 2020 to Feb 2021 – this shows payments of $583.66 and $1,355.29, both on February 1, 2021. This leaves $410.53 in total owing -- $149.48 of this amount is a balance amount from utilities, carried over from January 2021.

Elsewhere in their documents, the landlord described the following events that the tenants allege required the emergency call to a plumber:

- the neighbouring unit complained of sink blockage on October 31, 2020 – at that time, the tenant here had no sink blockage issue

- on December 21, the tenant mentioned blockage – the landlord personally visited to attend to this on that day
- the tenant did not produce a record of the plumber's visit, nor any receipts – then "they. . . deducted the amount of $410.53 from the Rent for January and February 2021 on their own calculations and without my agreement."
- Also: "I was never informed that sink got clogged again. I was surprised to see the message that they ended up calling a plumber without my permission. Though it was neither any emergency repair nor any leakage."
- Also: "I fixed it twice; I called and texted several times and did not get any response, never informed, and asked about calling plumber; did not receive any detail of expenses and invoices."

The landlord maintains the tenants deducted this amount from the total rent they must pay, without producing a receipt or invoice for work performed by a plumber.

The landlord submitted a copy of an email from the tenant to the landlord dated February 1, 2021. In this, the tenant drew the landlord's attention to their request for a "professional" to repair the plumbing issue that arose in December 2020. They presented that the landlord responded by telling the tenant to find another place to live. This left the tenant having to call a plumber after the landlord's own efforts did not rectify the problem, "leaving [them] without the use of the kitchen for a week and a major mess to clean up."

Elsewhere in this message, the tenant speaks to the landlord directly: ". . . you still owe for the balance of the plumbing bill." To close their message, they made a direct request to the landlord: "Please reply before Feb 1 so we can adjust the rent accordingly."

The following day, as shown in the landlord's email record, the landlord replied by stating: "You had not given me enough time to respond." They also pledged their willingness to talk through the issues and resolve them with the tenant. The tenant also requested that the landlord only contact one of them and strictly forbade the landlord from contacting the other. When they perceived this directive was not followed by the landlord, they stated they would contact the police. This was later in the evening of February 2, 2021.

Minutes later, the tenant stated to the landlord that the amount they had forwarded for payment was "complete" Also: "You are responsible for the emergency plumbing bill, period, disagree all you want, that is the law."

The tenant applied to challenge the validity of the 10-Day Notice on February 16, 2021. This was 4 days after the document was delivered via Canada Post registered mail on February 12, 2021.

In their testimony, the tenant described the sink blockage that started on December 21, 2020. This necessitated a visit from the landlord who attempted to use Drano; however, this did not unblock the sink. This was how they followed the landlord's instructions to "before you call the plumber to call me." On December 24, 2020 they called the plumber to fix the problem and paid $313.65. This was when they were still waiting for the landlord, with a "pre-holiday rate going up" for a plumber's visit.

The tenant pointed to text messages they included in their evidence. When discussing a billed BC Hydro amount that was overpaid, this was their proposal that the landlord deduct the overpaid amount from rent. That dialogue appears in the tenant's evidence as follows:

- pre-840: tenant: "Also I am just confirming based on our conversation you agreed that when I get the bc hydro bill I can take my portion of the bill it off the rent."

- 840: landlord: "So do you receive the bill and second because of that draino I am not feeling well but what is the status of the sink now."

- 9:46: tenant: "The bill will come soon and as I said I will deduct it from the rent as we agreed. The sink is still blocked . . .."

The tenant maintained that late or weekend communication regarding a blocked drain is an emergency. In the hearing, they stated they provided this invoice to the landlord "around Christmas."

In the hearing the landlord responded to this to say the tenant has provided no proof that they relayed this receipt to the landlord. The landlord reiterated that at no time did they see a plumber receipt for this work undertaken on December 24.

Analysis

The *Act* s. 26 requires a tenant to 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.

Following this, s. 33 outlines emergency repairs:

(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
        . . .
        (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
        . . .
(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 the 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.

From the record before me, I can establish that the monthly rent, as per the agreement between the parties, was $2,200. The tenant did not specifically challenge the ledgers that appear in the landlord's evidence in terms of the amounts of rent tendered each month since the beginning of the tenancy.

Next, I find the record shows the tenant did not pay a full amount of rent combined with utilities from January 2021 through to February 2021. This amount, as shown in the ledger, is $410.53. The tenant did not challenge this precise dollar amount as an amount owed, nor did they challenge the calculation or present an alternate accounting.

The question I must resolve is whether the tenant had the right under the *Act* to deduct this amount from the rent.

I find the tenant did not have the right to make a deduction from their rent. The situation with the sink presented a situation such as that set out in s. 33(1)(c)(ii), that of a "damaged or blocked water or sewer pipes or plumbing fixture". The evidence shows, and both parties described the landlord attempting to fix this blockage on their own using a chemical agent.

I can accept that the tenant afforded the landlord a reasonable opportunity to resolve the situation on their own in this way. This is shown in the message of 9:46 p.m. from December 23 when the tenant advised the landlord that the sink was still blocked – this was two days after its onset. There was urgency added to the situation with an immediate pending holiday, and the landlord's response shows the landlord's condition was not optimal to deal with the situation where they were not feeling well. For these reasons, I find there was nothing precluding the tenant from contacting a plumber.

Following this, the tenant did not claim the reimbursement from the landlord in a proper fashion. There is no evidence to show they gave the landlord a written account of repairs; however, this stems from a situation where the landlord was personally involved and observed the situation firsthand in their own attempt to clear the blockage. The landlord was well aware of the situation.

I find as fact the landlord was *not* aware of the cost involved, and the tenant did not forward a receipt for the amount claimed. There is simply no record of the tenant advising the landlord of the amount, neither by text message nor by email. There is no record of the tenant providing a copy of the receipt for the amount claimed, which is $313.65. While there are a number of other messages between the parties – chiefly the landlord attempting to clarify and/or rectify utility amounts, even with some talk of having an amount deducted from rent – there is no single message in which the tenant forwarded the receipt to the landlord, or even advised of this exact dollar amount they paid for plumbing. Without this evidence, I find the tenant did not meet the requirement of s. 33(5)(b).

The only evidence that approximates such a conversation is that of the tenant's message to the landlord on February 2, sent in response to the landlord's query on the full rent amount. This was: "You are responsible for the emergency plumbing bill, period, disagree all you want, that is the law." This places the reality of a paid plumbing bill within the landlord's knowledge; however, I find this is not evidence showing the tenant properly forwarded an account of the repairs, with a receipt. The tenant has not presented sufficient evidence showing they provided this required information to the landlord.

Because of this, I find s. 33(6)(b) applies: there is no pretext for the landlord to reimburse the tenant for the amount paid for the emergency repair. The tenant was not in a position to deduct any amount of rent for this purpose. I find the requirement of s. 26 is paramount in this situation.

The record shows the tenant provided an ultimatum to the landlord on February 1, which was the day rent was to be paid in full: "Please reply before Feb 1 [i.e., that very same day] so we can adjust the rent accordingly." The response shows the landlord pleading for a discussion; however, their effort in this direction was rebuffed by the tenant. At this juncture the tenant had the opportunity to rectify the situation; however, they placed the expectation for repayment (in the form of rent reduction) on the landlord, with neither a receipt showing the actual amount paid, nor a fulsome accounting of the work performed.

For these reasons, I find the tenant did not have the right to deduct any portion from the rent amounts owing on February 1st. This means the landlord was justified in issuing the 10-Day Notice on February 5. The tenant failed to meet all the steps to establish their right to make a deduction.

To be effective, the 10-Day Notice issued by the landlord must conform with s. 52 of the *Act*. The notice must contain: the signature of the landlord; the date; the address of the rental unit; the effective date; and the grounds for ending the tenancy. A notice must also be in the approved form. On my review of the document as it appears in the landlord's evidence, I find it contains each of the necessary elements set out in s. 52.

I find the landlord had the authority to issue the Notice under s. 46 of the *Act*. I dismiss the tenant's Application for cancellation of the 10-Day Notice. Therefore, I grant the landlord's request for an Order of Possession under s. 55 of the *Act*.

Conclusion

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, the landlord may file this Order of Possession with the Supreme Court of British Columbia where it will be 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 s. 9.1(1) of the *Act*.

Dated: May 26, 2021

Residential Tenancy Branch