



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal Lepage
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was convened by way of conference call in response to Applications for Dispute Resolution filed by the Tenant on February 18, 2021 and March 10, 2021 (the "Applications"). The Tenant applied as follows in both Applications:

- To dispute 10 Day Notices to End Tenancy for Unpaid Rent or Utilities issued in February and March
- For compensation for monetary loss or other money owed
- To be paid back for the cost of emergency repairs made during the tenancy
- To reduce rent for repairs, services or facilities agreed upon but not provided
- For a repair order
- To recover the filing fee

The Applications were originally set for a hearing May 25, 2021. The Agents for the Landlord appeared at the first hearing. The Tenant did not appear at the first hearing. The Landlord was issued an Order of Possession and a Monetary Order in a decision issued May 25, 2021. The Tenant sought a review of the original decision and was granted a review hearing. The review hearing came before me June 22, 2021.

The Tenant appeared at the review hearing. The Agents for the Landlord appeared at the review hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset that I would consider the disputes of the Notices, request to be paid back for the cost of emergency repairs and request to recover the filing fees. I told the Tenant the remaining requests would be dismissed with leave to re-apply as they are not sufficiently related to the disputes of the

Notices. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

The Agents provided the correct rental unit address which is reflected on the front page of this decision. I note that the Landlord sought a correction of the original Order of Possession and Monetary Order due to the rental unit address on these. The correct rental unit address has been included in this decision and the Order of Possession issued.

The Applications named the Agents as the landlord. I told the parties the Applications should be in the name of the owner of the rental unit or the name of the landlord as written on the tenancy agreement. The Agents provided the name of the landlord as written on the tenancy agreement and this is reflected in the style of cause.

Neither party had submitted evidence relevant to the issues raised in the Applications. I asked about service of the review decision and Notice of Hearing for the review hearing. The Agents advised that they had not received these from the Tenant but had obtained the relevant information from the RTB. The Agents confirmed they were fine with proceeding with the review hearing. The Tenant testified that she sent the review decision and Notice of Hearing to the Landlord by registered mail as required and provided Tracking Number 1. I did not go into service of the review decision and Notice of Hearing further given the Agents confirmed they were fine with proceeding with the review hearing.

In relation to evidence, the Tenant testified that she did not submit evidence because she could not get anything to upload to the RTB website. The Tenant testified that she had asked to email the evidence to the RTB but never heard back. During the hearing, there was information the Tenant did not know. The Tenant testified that she had given her documentary evidence to someone to have them upload it and therefore did not have her documentary evidence with her. I note that the Tenant filed the Applications February 18, 2021 and March 10, 2021 and therefore had more than four months from the first date and more than three months from the second date to submit evidence to the RTB either through the website, in person, by fax or by mail to the RTB. Further, the Agents testified that they have not received any evidence from the Tenant.

The Agents testified that they did submit evidence; however, no evidence from the Landlord was before me on either of the Applications. As discussed in the original decision, the Landlord submitted evidence on a different file set for a different hearing. The file number is noted on the front page of this decision. I told the parties I would look

at the Notices on the other file because the Landlord would be permitted to upload the Notices after the hearing in any event. However, I told the Agents I would not consider the other evidence uploaded to a different file as the Landlord was required to upload the evidence to the correct files that are before me. I therefore considered the Notice issued in February which was uploaded on the other file.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Notice issued in February and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

I note that the Tenant was clearly upset and was crying at the start of the review hearing. The Tenant indicated that her mother was present and was terminally ill. The Tenant indicated that she had missed the first hearing and understood the review hearing had to proceed as scheduled. I indicated to the Tenant that it was fine if she needed to take a moment. The Tenant did not take a moment. I proceeded with the review hearing. The Tenant did not ask to adjourn the review hearing and therefore I did not consider whether the review hearing should be adjourned in the circumstances.

During the hearing there were questions the Tenant could not answer or did not know the answer to; however, the Tenant indicated that this was because she did not have her documentary evidence with her because she had given it to someone else to try to upload it to the RTB website.

At the end of the hearing, after I had heard the parties on all issues, I asked the parties if there was anything further they wished to say before we concluded. At this point, the Tenant apologized, indicated that she may not have said everything that should have been said and mentioned being on medication. The Tenant indicated that this had not been a good time for the review hearing but that she knew it had to be done. I did not consider whether the review hearing should be adjourned at this point because I had heard the parties on all issues and the Tenant had clearly set out her position in relation to unpaid rent, emergency repairs and the Notices.

Issues to be Decided

1. Should the Notices be cancelled?
2. Is the Tenant entitled to be paid back for the cost of emergency repairs made during the tenancy?

3. Is the Tenant entitled to recover the filing fees?

Background and Evidence

The parties agreed there is a written tenancy agreement in this matter. The parties agreed the tenancy started October 10, 2020. The Agents testified that the tenancy was for a fixed term ending October 31, 2021. The Tenant did not know if the tenancy was for a fixed term. The parties agreed rent is \$1,995.00 per month due on the first day of each month. The parties agreed the Tenant paid a \$997.50 security deposit and \$997.50 pet damage deposit.

The only 10 Day Notice submitted was the 10 Day Notice dated February 09, 2021 (the "Notice") and therefore I did not consider the 10 Day Notice issued in March.

The Agents testified that the Notice was sent to the Tenant by registered mail February 10, 2021.

The Tenant testified that she did not receive the Notice by registered mail and received it at her door. The Tenant did not know when she received the Notice but testified that she filed the dispute in time.

The Notice states that the Tenant failed to pay \$1,995.00 in rent due February 10, 2021. The Tenant did not take issue with the form or content of the Notice.

The Agents testified that the Tenant failed to pay February rent and agreed it was due February 01, 2021. The Agents testified that the Tenant has not paid rent since being issued the Notice.

The Tenant agreed she did not pay February rent. The Tenant testified that she had authority to withhold rent pursuant to the emergency repairs section of the *Act* and because the Landlord agreed to the Tenant withholding rent.

The Tenant testified that she paid \$11,000.00 to fix an issue with the heat in the rental unit. The Tenant testified that she complied with section 33(3) and (5) of the *Act*.

The Tenant agreed she had not paid any rent since being issued the Notice.

The Agents denied that the Landlord agreed to the Tenant withholding rent.

The Agents testified as follows. The main heating source in the rental unit has been working. The Tenant did let the Landlord know about the heat issue and the Landlord addressed the issue. The Tenant did not comply with section 33(3) and (5) of the *Act*. The Tenant has asked for compensation for the heating issue but has not provided the Landlord with receipts for monies paid for this issue.

The Agents sought an Order of Possession effective two days after service.

Analysis

Section 26(1) of the *Act* states:

26 (1) 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 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution...

There are only six reasons a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenant a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenant to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenant withholding rent.

I am satisfied based on the testimony of the parties that the Tenant is required to pay \$1,995.00 in rent per month by the first day of each month pursuant to the tenancy agreement.

I am satisfied based on the testimony of the parties that the Tenant did not pay rent for February of 2021.

I do not accept based on the evidence provided that the Landlord consented to the Tenant withholding rent. The parties gave conflicting testimony on this point. I would expect an agreement between the Tenant and Landlord about the Tenant withholding rent to be in writing given the importance of paying rent in a tenancy. There is no documentary evidence before me showing that the Landlord consented to the Tenant withholding rent. In the absence of documentary evidence, I am not satisfied the Landlord consented to the Tenant withholding rent.

I am not satisfied based on the evidence provided that the Tenant was entitled to withhold rent pursuant to section 33 of the *Act*. Section 33 of the *Act* states in part:

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.

If a tenant paid for emergency repairs and complied with section 33 of the *Act*, I would expect there to be documentary evidence of this, particularly when a tenant has paid \$11,000.00 for emergency repairs. I would expect to see documentary evidence of the problem showing that it met the definition of an emergency repair in section 33(1) of the *Act*. I would expect to see documentary evidence showing the tenant's attempts to contact the landlord. I would expect to see invoices or receipts for the monies paid. I would expect to see written correspondence between the tenant and landlord in which the tenant asked to be reimbursed for the monies paid and provided a written account of the emergency repairs accompanied by a receipt for each amount claimed. Here, there is no documentary evidence before me about any of these points. Given the conflicting testimony of the parties about emergency repairs, and absence of documentary evidence to support the position of the Tenant, I am not satisfied the Tenant paid for emergency repairs and complied with the requirements of section 33 of the *Act*. Therefore, I am not satisfied the Tenant had authority to withhold rent pursuant to section 33(7) of the *Act*.

Given the above, I am not satisfied based on the evidence provided that the Tenant had authority under the *Act* to withhold rent. I am not satisfied section 46(3) of the *Act* applies. I find the Tenant was required to pay February rent pursuant to section 26(1) of the *Act*.

Given the Tenant did not pay February rent, the Landlord was entitled to serve the Tenant with the Notice pursuant to section 46(1) of the *Act*.

The parties gave conflicting testimony about service of the Notice; however, the Tenant acknowledged receipt of the Notice and therefore I find pursuant to section 71(2)(b) of the *Act* that the Tenant was sufficiently served with the Notice.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*. I acknowledge that the Notice states that February rent was due February 10, 2021 rather than February 01, 2021; however, I do not find that this invalidates the Notice. The Tenant agreed rent was due on the first day of each month and therefore should have known February rent was due February 01, 2021. Further, the Tenant did not take issue with the form or content of the Notice when asked.

The Tenant had five days from receipt of the Notice to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

I am satisfied based on the testimony of the parties that the Tenant has not paid any rent since being issued the Notice and therefore I find the Tenant did not pay the outstanding rent within five days of receiving the Notice.

For the purposes of this decision, I will accept that the Tenant received the Notice and disputed it within five days as stated by the Tenant. However, the Tenant has not provided a valid basis for disputing the Notice as the Tenant agreed she did not pay February rent and, as stated, I am not satisfied based on the evidence provided that the Tenant had authority under the *Act* to withhold rent.

Given the Tenant did not pay the outstanding rent and has not provided a valid basis for disputing the Notice, the Tenant's dispute of the Notice is dismissed without leave to re-apply.

Section 55(1) of the *Act* states:

55 (1) If 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

- (a) the landlord's notice to end tenancy complies with section 52...and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have found the Notice complies with section 52 of the *Act*. I have dismissed the Tenant's dispute of the Notice. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant.

Section 33 of the *Act* sets out when a tenant is entitled to be paid back for the cost of emergency repairs made during the tenancy. As already stated, I am not satisfied based on the evidence provided that the Tenant paid for emergency repairs and complied with the requirements of section 33 of the *Act*. Therefore, I am not satisfied the Tenant is entitled to be paid back for the cost of emergency repairs made during the tenancy. This request is dismissed without leave to re-apply.

Given the Tenant was not successful in the Applications, the Tenant is not entitled to recover the filing fees. This request is dismissed without leave to re-apply.

Pursuant to section 82(3) of the *Act*, I set aside the original decision, Order of Possession and Monetary Order issued May 25, 2021. I set aside the original decision, Order of Possession and Monetary Order because I have heard the parties in relation to the disputes of the Notices, emergency repairs and the filing fee. Further, I am issuing the Landlord an Order of Possession with the correct rental unit address on it.

In relation to the Monetary Order issued May 25, 2021 pursuant to section 55(1.1) of the *Act*, I set this aside and decline to issue the Landlord a Monetary Order. This is because section 55(1.1) of the *Act* only applies to Applications for Dispute Resolution filed after March 25, 2021, when section 55(1.1) of the *Act* came into force. Here, the Applications were filed prior to March 25, 2021 and therefore section 55(1.1) of the *Act* does not apply. Given this, the Landlord is not entitled to a Monetary Order for unpaid rent pursuant to section 55(1.1) of the *Act* and must seek this on their own Application for Dispute Resolution.

Conclusion

The original decision, Order of Possession and Monetary Order issued May 25, 2021 are set aside.

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is not issued a Monetary Order for the reasons outlined above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 28, 2021

Residential Tenancy Branch