



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, RR, RP, LRE, OLC, FFT, ERP**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Each party was assisted by a family member.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began on November 15, 2020. The monthly rent is \$1,750.00 payable on the first of each month. A security deposit of \$975.00 was paid at the start of the tenancy and is still held by the landlord.

The tenant submits that the rental unit requires repairs and maintenance and specifically that the clothes washer and dryer are not working. The tenant made requests to the landlord for repairs to the washer and dryer units as well as a number of other issues which they considered deficient. There was an agreement between the parties where the rent for the month of April, 2021 was reduced by \$275.00. No further rent reductions was agreed to by the landlord.

The tenant failed to pay rent as required on June 1, 2021. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated June 2, 2021. A copy of the notice was submitted into evidence. The tenant paid the amount of \$900.00 for June rent deducting the amount of \$850.00 for various repairs and maintenance they believed the landlord ought to perform.

The tenant confirmed that they have not paid the full amount owing to the landlord. The tenant subsequently withheld the amount of \$350.00 for each subsequent month paying \$1,400.00 for rent. The landlord indicated that these payments were accepted for use and occupancy only and did not agree to a rent reduction or to cancel the 10 Day Notice. The landlord testified that there is an arrear of \$2,250.00 as at the date of the hearing.

Analysis

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant testified that they received the 10 Day Notice on June 4, 2021, and filed a notice of dispute application on June 6, 2021 complying with the 5 day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The tenant provided undisputed testimony that they have unilaterally withheld full rent for the month of June 2021 and have failed to pay full rent as required under the tenancy agreement for each subsequent month.

Pursuant to 26(1) of the *Act*, 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.

The tenant submits that they withheld the full rent as they believe that the landlord has failed to perform necessary repairs and maintenance to the suite. The tenant specifically mentions that the washer and dryer unit has not functioned and they have made multiple requests for their replacement or repair. I find that the tenant's position is not supported in the *Act*. While I accept the tenant's submission that they have made requests to the landlord to perform repairs or maintenance, I find that does not give rise to a basis to withhold the payment of monthly rent.

I accept the undisputed evidence of the parties that the tenant has failed to pay the full rent within 5 days of service of the 10 Day Notice. I further accept that the landlord has indicated to the tenant that any partial payments received were accepted for use and occupancy only and did not reinstate this tenancy. Accordingly, I dismiss this portion of the tenant's application seeking to cancel the 10 Day Notice.

Section 55 of the *Act* provides that:

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 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. I accept the evidence of the parties that there was a rental arrear of \$1,750.00 on the date of the 10 Day Notice and that the tenant has failed to pay the full arrears amount. Therefore I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

As this tenancy is ending I find that it is unnecessary to consider those portions of the tenant's application seeking orders pertaining to an ongoing tenancy such as the request for repairs. I dismiss the portion of the tenant's application pertaining to an ongoing tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This section is read in conjunction with section 65 to allow me to issue a retroactive reduction in the value of the monthly rent for this tenancy.

I accept the evidence of the parties that the tenant lost the use of some of the amenities during the tenancy. I find that the loss of use of the washer/dryer unit has had some negative impact on the tenancy. I further accept that there were some repairs required for fixtures and flooring. I find that much of the delay in repair work was contributed to by the tenant's conduct and failure to accommodate the third-party workers and allow them access to the suite.

Viewing the evidence in its entirety I find that the loss of some of the services and facilities has had a small negative effect on this tenancy. There is little evidence before me that the tenant was unable to reside in the rental suite. I find the tenant's complaints provided little evidence that the losses were anything more than minor inconveniences.

I find that a monetary award in the amount of \$120.00, the equivalent of \$20.00 for the period from May to October 2021 to be appropriate.

I accept that the tenant has already made deductions from the rent payable under the tenancy agreement and in accordance with the offsetting provisions of 72 of the *Act*, I find that the amount of \$120.00 may be deducted from the balance of the rental arrear for this tenancy.

As the tenant was not wholly successful in their application, I decline to issue an order allowing them to recover their filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary award in the tenant's favour in the amount of \$120.00 which may be deducted from the rental arrear for this tenancy.

The balance of the tenant's application is dismissed without leave to reapply.

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: October 4, 2021

Residential Tenancy Branch