



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP (Tenant's Application)
 OPR (Landlord's Application)

Introduction

The Tenant applies to cancel two 10-Day Notices to End Tenancy pursuant to s. 46 of the *Residential Tenancy Act* (the "*Act*"). The Tenant also seeks compensation for emergency repairs pursuant to s. 33 of the *Act*.

The Landlord seeks an order for possession pursuant s. 55 of the *Act* after issuing a 10-Day Notice to End Tenancy signed on July 14, 2021.

R.S. and R.N. appeared for the corporate Landlord. T.M. appeared on his own behalf as Tenant.

The parties affirmed to tell the truth during the hearing and were given a full opportunity to be heard, to present sworn testimony, question the other party, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord first issued a 10-Day Notice to End Tenancy, signed June 7, 2021, by posting it to the Tenant's door on June 8, 2021. The Tenant confirmed receipt of the Notice to End Tenancy signed June 7, 2021. I find that the notice signed June 7, 2021 was served in accordance with s. 88 of the *Act* and was received by the Tenant on June 8, 2021.

The Landlord issued a second 10-Day Notice to End Tenancy, signed July 14, 2021, by posting it to the Tenant's door on July 14, 2021. The Tenant, again, confirmed receipt of the Notice to End Tenancy signed on July 14, 2021. I find that the notice signed July 14,

2021 was served in accordance with s. 88 of the *Act* and was received by the Tenant on July 14, 2021.

The Tenant indicated that he served the Notice of Dispute Resolution and evidence for his application by way of registered mail sent on August 6, 2021. The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution and evidence. I find that the application and evidence was served in accordance with s. 89 of the *Act* and deem the Landlord to have been served on August 11, 2021 pursuant to s. 90 of the *Act*.

The Landlord advised having served the Tenant with the Notice of Dispute Resolution for their application and evidence by way of registered mail sent on September 24, 2021. The Tenant confirmed receipt of the Landlord's evidence. I find that the Landlord's application and evidence was served in accordance with s. 89 of the *Act* and deem the Tenant to have been served on September 29, 2021 pursuant to s. 90 of the *Act*.

Preliminary Issue – Amendment to the Tenant's Application

The Tenant applied to amend their application to dispute the second 10-Day Notice to End Tenancy signed on July 14, 2021. The amendment was filed on July 16, 2021. Pursuant to s. 64(3)(c), I grant the amendment on the grounds that the second Notice to End Tenancy is the subject matter of the Landlord's cross-application, which was filed on August 10, 2021, and deal with the same issue as that raised within the original notice of June 7, 2021, namely unpaid rent.

Preliminary Issue – Amendment to the Style of Cause

The Tenant's application named R.S. as the Landlord. At the hearing, I confirmed that R.S. is the property manager for the residential property and that the Landlord is, properly, the corporate Landlord as named in their cross-application. According to the Rules of Procedure, I hereby amend the Style of Cause to indicate the correct corporate Landlord as listed in the Landlord's cross-application.

Issue(s) to be Decided

- 1) Whether the 10-Day Notices should be cancelled pursuant to s. 46 of the *Act*?
- 2) Whether the Landlord is entitled to unpaid rent pursuant to s. 55(1.1) of the *Act*?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlord submitted a written tenancy agreement indicating that the Tenant began to occupy the rental unit on May 20, 2016. Rent was paid in the amount of \$700.00 per month, which in the written tenancy agreement was due on the 20th of each month. The parties confirmed that Tenant did move in on May 20, 2016 and paid rent in the amount of \$700.00, however, that rent was due on the 1st day of each month. No written amendments to the tenancy agreement were provided nor did the parties indicate one exist. The Tenant confirmed his understanding that rent was due on the 1st day of the month and has been paying rent based on this for the past 6 years. Though not within the written tenancy agreement, the Tenant indicated having paid a security deposit of \$350.00, which the Landlord confirmed holding in trust for the Tenant.

The Tenant continues to reside within the rental unit.

The Landlord issued the first 10-Day Notice to End Tenancy, signed June 7, 2021, after the Tenant had failed to pay rent on the 1st of the month. The Landlord indicated that the Tenant did pay \$700.00 on June 15, 2021 in satisfaction of rent for June 2021.

The Tenant indicated to the Landlord in early July 2021 that he would be late in paying rent and that the Landlord should expect rent on July 13, 2021. The Landlord indicated that the rent could be paid by placing it in the secure drop-box at the residential property. When rent was not paid by the Tenant as discussed on July 13, 2021, the Landlord then issued the second Notice to End Tenancy signed July 14, 2021 on the basis that rent for July was not paid.

The Landlord indicated that since issuing the first Notice to End Tenancy, the Tenant has made the following payments:

- \$700.00 on June 15, 2021;
- \$610.00 on September 7, 2021;
- \$700.00 on September 13, 2021; and
- \$300.00 on October 4, 2021.

The Tenant confirmed that he paid rent in the amounts and on the dates outlined by the Landlord in its submissions. The Landlord stated that a third Notice to End Tenancy was issued in August 2021, though this was not put into evidence and is not subject to either application.

In response, the Tenant indicated that the rental unit had been suffering from electrical issues for a period of approximately 13-months. The issue, as described by the Tenant, was that a tenant in an adjacent rental unit was overloading the circuit that is shared between the rental units, which prompted a loss of power for the Tenant. The Tenant advised having discussed the issue with the Landlord's caretaker at the property but provided no written demands that the issue be repaired by the Landlord.

The Tenant indicated that after waiting for the Landlord to address the issue for several months, he undertook repairs himself such that he was able to patch into a light receptacle and power his appliances. The Tenant submits into evidence a receipt from Home Depot dated May 6, 2021 for \$100.18 for the supplies he needed to complete the repairs.

The Landlord denies that the electrical issue had been ignored by them and that they addressed it as soon as it was brought to their attention in early May 2021. R.S. indicated that he learnt of the issue on May 5, 2021 by way of text message received by the building's caretaker. The Landlord has submitted an invoice dated May 17, 2021 which they say was paid to address the electrical issue raised by the Tenant. The Tenant confirmed that the electrical issue was addressed by mid-May 2021.

The Landlord argued that they did not approve the repairs undertaken by the Tenant and addressed the issue as soon as it was brought to their attention. The Landlord advised that they had received a claim for compensation from the Tenant in May 2021, which they say was for a claim of approximately \$400.00, which represented the cost of materials, labour, and loss of food that spoiled in the Tenant's fridge following an outage. The Tenant did not submit documents with respect to the approximate \$400.00 claim he made to the Landlord in May 2021.

R.S. indicated that he had discussed the Tenant's claim for compensation with him in May 2021 and came to an agreement that the Tenant could deduct \$80.00 from his next month's rent for the food that had spoiled. The Tenant had initially indicated that the agreement was for \$90.00 but corrected himself and admitted that the agreement with

the Landlord was for \$80.00. The agreement was not in writing and was an oral understanding.

Analysis

The Tenant applies to cancel two 10-Day Notices to End Tenancy dated June 7, 2021 and July 14, 2021. The Tenant also seeks compensation for repairs undertaken by him at the rental unit. The Landlord applies for an order for possession on the basis of the 10-Day Notice to End Tenancy dated July 14, 2021.

I accept that both Notices to End Tenancy comply with the formal requirements of s. 52 of the *Act* in that they were signed and dated by the Landlord, stated the cause for the end of the tenancy, listed the effective date, and was in the proper form. The notice of June 7, 2021 was in a previous version of RTB-30, however, in content it contains all the information found in the current form RTB-30.

Pursuant to s. 46 of the *Act*, a landlord may end a tenancy with 10 day's notice if a tenant fails to pay rent when it is due. Section 26(1) of the *Act* clearly sets out a tenant's obligation to pay rent. A tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* proscribes a set of limited circumstances in which monies claimed by the Tenant can be deducted from, which include:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).
2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

In the present circumstances, the Tenant makes a claim for compensation related to the repairs he undertook himself. Though I accept the Tenant may have brought the electrical issue to the attention of the Landlord sometime before May 2021, I do not accept that Tenant's course of action was advisable or permitted by the *Act*.

Section 33(8) allows a tenant to deduct rent only after the process contemplated under s. 33(5) is followed, which requires that the Landlord make two-attempts to telephone the Landlord to advise that an emergency repair is needed and provide a reasonable amount of time for the Landlord to address the issue. I accept the Landlord's evidence that they took action to address the electrical issue in a timely fashion after it was brought to their attention on May 5, 2021 as is evidenced by the receipt of May 17, 2021 for the repairs that were undertaken. Further, the Tenant's receipt from Home Depot is dated May 6, 2021, which corresponds with the timeline provided by the Landlord.

I find that the Tenant failed to follow the proper procedure for seeking compensation under s. 33(5) as outlined above and was not entitled to deduct rent in any amount. I further find that the Tenant has failed to establish a claim for compensation for repairs as the process in s. 33(5) was not followed and the work that was undertaken was unauthorized and not completed in a professional manner.

Though the written tenancy agreement indicated that rent was due on the 20th of each month, I accept the undisputed evidence from the parties that rent was due on the 1st. The Tenant indicated that he had been paying rent on the 1st for 6 years and did not argue that the date within the tenancy agreement was the one to be followed. I infer, based on the parties' long-standing practice, that rent was due and payable on the 1st day of each month.

I accept the undisputed evidence of the parties that the Tenant did not pay rent when it was due on June 1, 2021 and that rent was paid on June 15, 2021. I find that the Tenant breached his obligation to pay rent when it was due on the 1st and failed to pay the outstanding rent within 5-days of receiving the notice. As such, I dismiss the Tenant's application to cancel the 10-Day Notice to End Tenancy dated June 7, 2021 and the Landlord is entitled to an order for possession pursuant to s. 55 of the *Act*.

As the Landlord has obtained an order for possession, any issues respecting the 10-Day Notice to End Tenancy signed July 14, 2021 are moot and I need not consider it any further.

Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then the Director must grant an order for unpaid rent. In accordance with Policy Guideline #3, an order for unpaid rent is limited to rent owed during the tenancy and does not include compensation for an overholding tenant.

Where a tenant continues to reside in the rental unit and is unsuccessful in disputing a notice to end tenancy at the hearing, the tenancy ends on the date of the tenant's hearing as ordered by the Director in accordance with s. 68(2) of the *Act*.

The Tenant still resides within the rental unit and, in accordance with Policy Guideline #3, I find that the tenancy ends on October 7, 2021. Based on the undisputed evidence of both parties, the Tenant has made the following payments since June 2021:

Month	Rent Due	Payment Made	Difference
June 2021	\$700.00	\$700.00	\$0.00
July 2021	\$700.00	\$0.00	-\$700.00
August 2021	\$700.00	\$0.00	-\$700.00
September 2021	\$700.00	\$1,310.00	\$610.00
October 2021	\$700.00	\$300.00	-\$400.00
TOTAL RENT ARREARS			\$1,190.00

I find that the Tenant has arrears in rent in the amount of \$1,190.00. Taking into account the parties' agreement that the Tenant could deduct \$80.00 from his rent in June 2021, this would place the total amount owed by the Tenant in the amount of \$1,110.00 and the Landlord shall have an order for that amount. In partial satisfaction of unpaid rent, I order that the Landlord keep the security deposit of \$350.00 it holds in trust for the Tenant.

Conclusion

I dismiss the Tenant's application to cancel the 10-Day Notice to End Tenancy signed June 7, 2021. I further dismiss the Tenant's application for compensation for emergency repairs.

The Landlord is granted an order for possession pursuant to s. 55 of the *Act* and the Tenant shall give vacant possession of the rental unit **two (2) days** after being served with the order by the Landlord.

Pursuant to s. 55(1.1) of the *Act*, I find that the Tenant is in rental arrears in the amount of \$1,110.00. In partial satisfaction of this amount, I order pursuant to s. 72(2) that the Landlord keep the \$350.00 security deposit it currently holds in trust for the Tenant. In total, the Tenant shall pay the amount of **\$760.00** to the Landlord, representing the

balance of the unpaid rent after taking into account the security deposit retained by the Landlord.

The Landlord's application for an order for possession pursuant to the 10-Day Notice to End Tenancy signed on July 14, 2021 is hereby dismissed as the order for possession was granted pursuant to the Notice to End Tenancy of June 7, 2021.

It is the Landlord's obligation to serve these orders on the Tenant. If the Tenant does not comply with the monetary portion of this order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the Tenant does not comply with the order for possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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: October 13, 2021

Residential Tenancy Branch