



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, MNRT, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy dispute. The Tenant applied for:

- an order to cancel a 10 Day Notice to End Tenancy For Unpaid Rent, signed on November 4, 2021 (the 10 Day Notice);
- compensation for monetary loss or other money owed;
- reimbursement for the cost of emergency repairs made during the tenancy; and
- the filing fee.

Those who attended the hearing were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified they served their Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Landlord by email on November 5, 2021. The Landlord confirmed receipt of the documents. The Tenant testified they served their December 23, 2021 amendment and related evidence on the Landlord by email on December 23, 2021, and by hand on December 24, 2021. The Landlord confirmed they received the Tenant's amendment and evidence via email. I find the Tenant served the NDRP, amendment, and their evidence on the Landlord in accordance with section 89 of the Act.

The Landlord testified they served their responsive evidence on the Tenant on November 23, 2021, by email. The Tenant confirmed they received the Landlord's evidence. I find the Landlord served their evidence on the Tenant in accordance with section 89 of the Act.

Preliminary Matter

The Residential Tenancy Branch Rules of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As they are not related to the central issue of whether the tenancy will continue, I dismissed, with leave to reapply, the Tenant's application for compensation for monetary loss or other money owed, and reimbursement for the cost of emergency repairs made during the tenancy.

Issues to be Decided

- 1) Is the Tenant entitled to an order to cancel the 10 Day Notice? And if not, is the Landlord entitled to an order of possession?
- 2) Is the Tenant entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began January 4, 2021; rent is \$3,300.00, due on the first of the month; and the Tenant paid a security deposit of \$1,650.00 and a pet deposit of \$1,650.00, which the Landlord still holds.

A copy of the 10 Day Notice was submitted as evidence. The Landlord testified they served the 10 Day Notice on the Tenant by registered mail on November 4, 2021. An email from the Landlord to the Tenant, dated November 4, 2021, was submitted as evidence; it informs the Tenant that the 10 Day Notice has been served by registered mail. The Tenant confirmed receiving the Notice on November 5 or 6, 2021.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenant failed to pay rent in the amount of \$3,300.00. The Landlord testified that, in error, they reversed the month and day, resulting in the Notice incorrectly stating the amount was due on January 11, 2021. The Landlord testified that the amount owing was due on November 1, 2021; this was not disputed by the Tenant.

The Landlord testified the Tenant did not pay rent for November 2021 on time, and did not pay the rent within five days of receiving the 10 Day Notice.

The Landlord testified the Tenant made payments in November 2021 as follows:

November 15	\$1,000.00
November 18	\$2,000.00
November 19	\$400.00
November 24	\$70.00
Total	\$3,470.00

The Landlord testified they are seeking an order of possession for the end of February, 2022.

The Tenant testified that they withheld November 2021 rent for emergency repairs due to a wasp infestation, and later paid rent on the advice of a lawyer.

The Tenant testified that the wasp problem began at the end of June, 2021, and that on July 6 or 7, 2021, they notified the Landlord that the problem was “getting bad.” The Tenant testified the Landlord told him to deal with the situation himself.

The Tenant testified that the infestation escalated in August and September, and that on October 1, 2021, he found over 100 wasps in the master bathroom. The Tenant testified that a few days prior to October 1, 2021, he had been stung by a wasp in his sleep, causing his tongue to swell somewhat. The Tenant testified he had previously begun taking Benadryl before bed, in anticipation of being stung.

The Tenant testified that they arranged for an exterminator to come on October 2, 2021, and that the Tenant stayed in a short-term rental until the wasp problem abated.

The Tenant submitted as evidence correspondence with the Landlord regarding his reimbursement request related to the wasp infestation, and testified that he submitted receipts to the Landlord. The Tenant submitted as evidence an email dated November 1, 2021 (2:47 p.m.), in which they advise the Landlord they are withholding rent due to the unresolved issues between the parties.

In an email submitted as evidence, dated November 1, 2021 (9:41 p.m.), the Landlord agrees to pay \$1,465.25 of the Tenant's reported expenses, plus an unspecified additional amount for pest control, once the Tenant has provided an invoice or receipt.

In the email, the Landlord states they can deduct the \$1,465.25 from the November rent, and asks the Tenant to pay the balance of \$1,834.75 for the November rent. The allowed deduction includes \$299.25 for extermination services.

The Tenant submitted as evidence an updated Monetary Worksheet, dated December 22, 2021, in which they list amounts for emergency housing, extermination services, coworking space, a physician fee, cleaning costs, costs to replace “items in master bath,” insurance costs, and an amount for “house uninhabitable from July through most of October.” The amount listed for extermination services is \$299.25.

Analysis

Based on the testimony of the Landlord, I find they served the 10 Day Notice on the Tenant in accordance with section 88 of the Act.

I find the 10 Day Notice meets the form and content requirements of section 52 of the Act, despite the Notice providing an incorrect date for when the November 1, 2021 rent of \$3,300.00 was due. Section 68 of the Act allows me to amend a notice to end tenancy if satisfied that the person receiving the notice knew, or should have known, the information. As the Tenant raised no question in their application or the hearing, I am satisfied they understood the rent owing referred to in the 10 Day Notice was due on November 1, 2021.

Section 46 states that within 5 days after receiving a notice for non-payment of rent, the tenant may pay the overdue rent, or dispute the notice. As the Tenant testified they received the 10 Day Notice on November 5 or 6, 2021, and they had applied to dispute the Notice on November 4, 2021, having been told by the Landlord the 10 Day Notice had been served, I find the Tenant applied to dispute the 10 Day Notice within the deadline set by the Act.

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

I accept the Tenant’s testimony that he withheld rent for emergency repairs paid.

Section 33(1) of the Act provides that “emergency repairs” mean 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.

I accept the Tenant’s affirmed undisputed testimony and evidence that on October 1, 2021, he found over 100 wasps in the master bathroom, and therefore called in an exterminator, which cost \$299.25.

While extermination costs are not specified by section 33(1), I find the extermination service sought by the Tenant constitutes an emergency repair, as the need was urgent, the service necessary for the health and safety of anyone entering the rental unit, necessary for the use of the rental unit, and the service was sought for the purpose of addressing a serious problem in the rental unit.

Section 33 (5) of the Act states:

- (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.

Section 33(7) of the Act states: 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.

Based on the testimony and evidence before me, I find the Tenant was entitled to withhold \$299.25, the cost of the exterminator, for emergency repairs.

Based on the November 1, 2021 (9:41 p.m.) email submitted as evidence, I accept that the Landlord told the Tenant they may deduct \$1,465.25 from the November rent, and asked the Tenant to pay the balance of \$1,834.75.

I accept the Landlord's affirmed undisputed testimony that the Tenant did not pay November 2021 rent in full until November 19, 2021.

There is insufficient evidence before me to demonstrate the Tenant had a legal right to withhold their entire November 2021 rent payment.

I find that the tenancy is ending because the Tenant did not pay rent when due. I find that the Landlord is entitled to an order of possession.

As the Tenant is unsuccessful in his application, I decline to award him the filing fee.

The Tenant must pay rent for February 2022 in the amount of \$3,300.00, in accordance with the tenancy agreement.

Conclusion

The Tenant's application is dismissed.

The tenancy will end on February 28, 2022 at 1:00 p.m.

The Landlord is granted an order of possession effective February 28, 2022 at 1:00 p.m.

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: January 19, 2022

Residential Tenancy Branch