



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, RP, FFT

Introduction

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

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated November 6, 2021 (the 10 Day Notice);
- an order to reduce rent for repairs, services, or facilities agreed upon but not provided;
- an order for repairs to be made to the unit, having notified the Landlord in writing; and
- the filing fee.

The hearing was attended by the Landlord, and a person with the initials AI, who identified themselves as a co-tenant. This was not disputed by the Landlord. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

AI testified he served the Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Landlord by registered mail on November 25, 2021; the Landlord confirmed she received it. I find AI served the Landlord in accordance with section 89 of the Act.

The Landlord testified she served her responsive evidence on the Tenants by registered mail on an unknown date in late December; AI confirmed he received it. I find the Landlord served the Tenants in accordance with section 88 of the Act.

Preliminary Matter

Rule 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 dismiss the Tenant's claims, except for the dispute of the 10 Day Notice.

Issues to be Decided

- 1) Is the Tenant entitled to an order cancelling the 10 Day Notice?
- 2) If not, is the Landlord entitled to an order of possession and a monetary order for unpaid rent?
- 3) Is the Tenant entitled to the filing fee?

Background and Evidence

Those present agreed on the following particulars of the tenancy. It began May 28, 2015; rent is due on the first of the month, and as of January 2022 is \$2,496.00; and the Tenant paid a security deposit of \$1,200.00, which the Landlord still holds.

A copy of the 10 Day Notice is submitted as evidence. The Landlord testified she served the 10 Day Notice on the Tenant by posting it to the door on November 8, 2021; the Tenant confirmed receiving it on November 11, 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 \$2,460.00, due November 1, 2021.

The Landlord testified that the Tenant did not pay the November 2021 rent on November 1, the Landlord emailed the Tenant a few times about it, but as he did not pay the rent, she served the Tenant with the 10 Day Notice.

The Landlord testified that in January 2022, the Tenant paid the rent for November 2021, December 2021, and January 2022.

The Landlord testified that the Tenant has paid rent for February 2022, and that she is seeking an order of possession for the end of February 2022.

The Landlord testified this is not the first time the Tenant has not paid rent on time. The Landlord submitted as evidence a copy of a bank statement showing the three rent payments made in January 2022 for November 2021, December 2021, and January 2022.

Tenant AI provided testimony regarding repairs that need to be done in the bathroom of the rental unit. AI testified that he withheld rent to make urgent repairs to the bathroom. AI testified that there is a leak in the ceiling, which drips on a person's head when they sit on the toilet. AI also referred to previous problems with a washing machine in past years, and testified that the toilet needs to be replaced because it is 14 years old and "functions on and off."

When I asked AI if he had provided the Landlord with receipts for the emergency repairs, AI testified that he did not make any repairs, but contacted the strata, who fixed some of the issues, though there are still ongoing issues with the toilet. AI testified that the issue with the water leaking from above has subsided, but there is still a leak.

Tenant AI testified that later he paid the outstanding rent.

The Landlord testified that she had received no notification from the Tenant that there were any issues with the rental unit; he just stopped paying rent.

The Landlord testified that if the Tenant had notified her of the leak, she would have had it fixed. The Landlord submitted as evidence an email to a strata manager, dated January 10, 2022, in which she states the Tenant reported a leak in the bathroom ceiling on September 8, and that it is her understanding that a plumber came on September 14 [2021]. The Landlord asked for confirmation that the issue has been resolved. The strata manager wrote back on the same day, confirming that the repairs were completed.

The Landlord testified that once she was aware of the issue, she had told Tenant AI three times to provide her with a date on which she could send a plumber, but that he had not responded. The Landlord submitted as evidence an email to the primary Tenant, II, dated January 11, 2022, stating that Tenant AI sent the Landlord a text that morning stating that the bathroom ceiling is dripping water, but when the Landlord called

him, Tenant AI did not return her calls or texts. The email states the Landlord contacted the strata, who were not able to reach AI. The email states that AI had requested to cancel a plumber's visit, and that the Landlord rescheduled the plumber and provided written notice to Tenant AI regarding the plumber's entry to the unit.

Analysis

Based on the testimony of those present, I find that the Landlord served AI the 10 Day Notice on November 8, 2021 by posting it to the door, and the Notice was received by AI on November 11, 2021. I find the Landlord served the Tenant in accordance with section 88 of the Act.

As the 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form, I find that the Notice meets the form and content requirements of section 52.

Section 46 states that within five days after receiving a notice for non-payment of rent, the tenant may pay the overdue rent, or dispute the notice. Tenant AI testified he received the 10 Day Notice on November 11, 2021, and he applied to dispute the Notice on November 15, 2021. 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.

The Tenant testified that he withheld rent to make urgent repairs to the bathroom.

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.

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.

The Tenant testified that he did not make emergency repairs, but contacted the strata, who made repairs.

Based on the Tenant's undisputed affirmed testimony, I find the Tenant was not entitled to withhold rent for emergency repairs.

The Landlord testified that the Tenant did not report the ceiling leak to her, delayed the visit of a plumber once she became aware of the issue, and did not pay rent for November and December 2021 until January 2022. The Landlord's testimony is supported by her submitted a copy of a bank statement showing the three rent payments made in January 2022 for November 2021, December 2021, and January 2022.

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.

Conclusion

The Tenant's application is dismissed; the 10 Day Notice is upheld.

The Landlord's application is granted.

The Landlord is granted an order of possession which will be 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: February 22, 2022

Residential Tenancy Branch