



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALORA MANAGEMENT LTD.

and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNR, MNRT, PSF, LRE, OLC, FFT

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for a monetary Order for emergency repairs, for an Order requiring the Landlord to provide services or facilities, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, for an Order suspending or setting conditions on the Landlord's right to enter the rental unit, and to recover the fee for filing this Application for Dispute Resolution.

At the hearing the Tenant stated that the application for an Order requiring the Landlord to provide services or facilities and for an Order requiring the Landlord to comply with the *Act* and/or the tenancy agreement relate was intended to be an application for an Order requiring the Landlord to make repairs in a timely manner.

The Tenant stated that the Dispute Resolution Package was mailed to both Respondents, although he cannot recall the date of service. The Agent for the Landlord #2 acknowledged that these documents were received by the Respondents.

On June 29, 2022 and July 17, 2022, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was mailed to the Landlord, although he cannot recall the date of mailing. The Agent for the Landlord #2 acknowledged this evidence was received by the Landlord and it was accepted as evidence for these proceedings.

On November 01, 2022 and November 02, 2022, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was mailed to the Landlord on November 03, 2022. The Agent for the Landlord #2 acknowledged this evidence was received by the Landlord and it was accepted as evidence for these proceedings.

On November 03, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord #2 stated that this evidence was mailed to the Tenant on November 03, 2022. The Tenant acknowledged this evidence was received and it was accepted as evidence for these proceedings.

On November 07, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord #2 stated that this evidence was mailed to the Tenant on November 07, 2022. The Tenant acknowledged this evidence was received and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant has identified several issues in dispute on the Application for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

The most urgent issue in dispute in this Application for Dispute Resolution is possession of the rental unit and I will, therefore, consider issues related to that matter, which include:

- the application to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities; and

- the application for an Order suspending or setting conditions on the Landlord's right to enter the rental unit.

I will also consider the Tenant's application to recover the fee for filing this Application for Dispute Resolution.

I dismiss the application for an Order requiring the Landlord to provide services or facilities and for an Order requiring the Landlord to comply with the *Act* and/or the tenancy agreement, which were intended to be an application for an Order requiring the Landlord to make repairs in a timely manner. I find the need for repairs is not sufficiently related to possession of the rental unit.

The Tenant retains the right to file an Application for Dispute Resolution seeking an Order requiring the Landlord to make repairs.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, be set aside?

Is the Tenant entitled to compensation for emergency repairs?

Is there a need to issue an Order setting conditions on the Landlord's right to enter the rental unit?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in 2014;
- the parties have a verbal tenancy agreement;
- rent is due by the first day of each month;
- monthly rent is currently \$4,300.00;
- the Tenant paid \$2,150.00 in rent for February of 2022;
- the Tenant has not paid any rent for the period between March 01, 2022 and November 30, 2022;
- the Tenant did not have authority from the Residential Tenancy Branch to withhold any portion of his rent; and
- a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door of the rental unit on June 26, 2022.

The Tenant stated that:

- he withheld rent because the Landlord told him he could make repairs and deduct the cost of those repairs from his rent; and
- the Landlord had to approve the repairs he made before he could withhold the cost of the repairs from his rent.

The Landlord stated that:

- he never gave the Tenant permission to withhold rent in compensation for repairs made at the rental unit.

When he was asked to identify documentary evidence to corroborate his submission that the Landlord gave him authority to withhold rent in compensation for repairs made to the unit, he was unable to do so.

The Tenant claimed compensation for emergency repairs, in the amount of \$35,000.00.

The parties were advised that the *Act* defines emergency repairs as repairs made for the purposes of repairing:

- major leaks in pipes or the roof,
- damaged or blocked water or sewer pipes or plumbing fixtures,
- the primary heating system,
- damaged or defective locks that give access to a rental unit,
- the electrical systems, or
- in prescribed circumstances, a rental unit or residential property.

When asked what emergency repairs had been made, the Tenant stated, in part, that he repaired some plumbing that was leaking in the between the floor and ceiling of the residential complex. The Tenant stated that he first reported the leak to the Landlord in 2015, he repeatedly informed the Landlord of the leak, and he last informed him of the leak on May 04, 2022. The Landlord stated that the leak was not reported to him until May 04, 2022.

The Landlord stated that upon hearing of the leak he asked the Tenant for a quote for repairing the leak but he did not give him authority to repair the pipes.

The Tenant stated that he hired a plumber to repair the leak and that he paid the following amount for plumbing repairs:

- May 03, 2022 - \$250.00
- May 18, 2022 - \$1,533.00
- August 10, 2022 – 787.50

The Tenant submitted copies of receipts for the aforementioned payments.

The Landlord and the Tenant agree that the aforementioned receipts were not provided to the Landlord until they were served to him as evidence for these proceedings.

When asked what emergency repairs had been made, the Tenant stated, in part that he attempted to repair a ceiling leak in the solarium.

The Tenant stated that he was unable to repair the ceiling leak in the solarium and that he has not paid for any repairs to the ceiling.

In support of his application for an Order suspending or setting conditions of the Landlord's right to enter the rental unit, the Tenant stated that he simply wants an Order requiring the Landlord to comply with the *Act* whenever the Landlord wishes to enter into the rental unit.

The Agent for the Landlord #2 stated that the Landlord has always complied with the *Act* when the Landlord wishes to enter the rental unit and that the Landlord will continue to do so.

Analysis

Section 33(1) of the *Residential Tenancy Act (Act)* defines "emergency repairs as 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.

On the basis of the testimony of the Tenant, I find that the leak between the ceiling and floor which the Tenant reported to the Landlord on May 04, 2020 had been an on-going problem since 2015. As this was an on-going problem and there is no evidence submitted that establishes the problem had become suddenly urgent, I find that the Tenant has failed to establish that the leak repair was “urgent”. As the leak was not “urgent”, I find that any repair associated to that leak did not constitute an “emergency repair”.

The plumbing invoice from August 10, 2022 suggests that the plumbing leak was minor, which supports my conclusion that the leak repair was not “urgent”.

Section 33(5) of the *Act* requires a landlord to 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.

As the leak does not constitute an “emergency repair”, I find that the Landlord is not obligated, pursuant to section 33(5) of the *Act*, to compensate the Tenant for the cost of that repair. I therefore dismiss the Tenant’s application to recover the cost of this repair.

I note that the plumbing invoice dated May 18, 2022 refers, in part, to a blocked drain in a laundry sink. Although the Tenant did not raise the issue of a blocked drain at the hearing, I find it is reasonable to conclude that, in some circumstances, such an issue could constitute an emergency repair.

Section 33(3) of the *Act* permits a tenant to 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.

The Tenant did not raise the issue of the blocked drain at the hearing and, as such, the Tenant did not establish that he made at least two attempts to inform the Landlord of the

problem. No evidence was presented to establish that the Landlord was ever informed of the blocked drain.

Even if the blocked drain did constitute an “emergency repair” the Tenant was required to inform the Landlord of the issue in accordance with section 33(3)(b) of the *Act*. I find that the Tenant submitted insufficient evidence to establish that the Landlord was informed of the blocked drain in accordance with section 33(3)(b) of the *Act*.

Section 33(6) of the *Act* stipulates that 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.

I find that the Tenant has submitted insufficient evidence to establish that he informed the Landlord of the blocked drain prior to making the repairs, as is required by section 33(6)(a) of the *Act*. I therefore find that the Tenant has failed to establish that he is entitled to compensation for clearing the blocked drain pursuant to section 33 of the *Act*.

I note that the plumbing invoice dated May 18, 2022 refers, in part, to repairing two toilets. The Tenant did not identify this repair as an “emergency repair” during the hearing. Without information that establishes this repair was urgent and necessary, I cannot conclude that those repairs constituted an “emergency repair”, as that term is defined by section 33(1) of the *Act*. As there is insufficient evidence that this was an “emergency repair”, I cannot conclude that the Tenant is entitled to compensation for those repairs pursuant to section 33 of the *Act*.

I note that the plumbing invoice dated May 03, 2022 relates to repairing a shower valve. The Tenant did not identify this repair as an “emergency repair” during the hearing. Without information that establishes this repair was urgent and necessary, I cannot conclude that those repairs constituted an “emergency repair”, as that term is defined by section 33(1) of the *Act*. As there is insufficient evidence that this was an “emergency repair”, I cannot conclude that the Tenant is entitled to compensation for those repairs

pursuant to section 33 of the *Act*.

Even if I concluded that the leaking ceiling in the solarium was an “emergency repair”, I would conclude that the Tenant is not entitled to recover costs of emergency repairs for that issue, pursuant to section 33 of the *Act*, as the Tenant did not incur any costs for the repair.

Section 33(7) of the *Act* stipulates that 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.

On the basis of the undisputed evidence, I find that the Tenant was required to pay rent of \$4,300.00 by the first day of each month.

Section 26(1) of the *Residential Tenancy Act (Act)* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

As the Tenant has failed to establish that he is entitled to compensation for “emergency repairs”, I cannot conclude that the Tenant had the right to withhold rent money pursuant to section 33(7) of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant did not have authority from the Residential Tenancy Branch to withhold any of the rent due to the Landlord.

I find that the Tenant has submitted insufficient evidence to support his submission that the Landlord gave him authority to withhold rent in compensation for repairs made at the rental unit. In reaching this conclusion I was influenced, in part, by the Landlord’s testimony that such permission was not granted. I was also influenced by the Tenant’s inability to identify documents in his extensive evidence submission that would corroborate the Tenant’s testimony that such permission was granted.

I have viewed the documentary evidence submitted by the Tenant and was unable to locate any document in which the Landlord provided the Tenant with permission to withhold rent in exchange for repairs completed at the rental unit. It is possible that such documentary evidence was submitted and I was unable to locate it due to the volume of the evidence and the poor quality of some of the evidence. If such evidence was submitted, Rule 7.4 of the Residential Tenancy Branch Rules of Procedure

required the Tenant to present it at the hearing.

As the Tenant failed to establish that he had the legal right to deduct any portion of his rent, I find that the Tenant was obligated to pay rent when it was due, pursuant to section 26(1) of the *Act*.

For clarity, the Tenant was required to pay rent when it was due even if he believed the Landlord owed him money for non-emergency repairs done at the unit or because of deficiencies with the unit. In the event the Tenant concluded that he was owed money for non-emergency repairs and/or deficiencies with the unit, the correct response was to file an Application for Dispute Resolution seeking a monetary Order for repairs and/or compensation for living with alleged deficiencies. The Tenant simply did not have the right to unilaterally withhold rent.

On the basis of the undisputed evidence, I find that the Tenant failed to \$2,150.00 in rent that was due on February 01, 2022. I find that the Tenant also failed to pay rent when it was due in March, April, May, June, July, August, September, October, and November of 2022.

Section 46(1) of the *Act* stipulates that 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. As the Tenant did not pay all of the rent that was due on February 01, 2022 and the Tenant has paid no rent for any period thereafter, I find that the Landlord had the right to serve the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46(1) of the *Act*.

On the basis of the undisputed evidence, I find that the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on the door of the rental unit on June 26, 2022. I find that this served as proper notice of the Landlord's intent to end the tenancy pursuant to section 46(1) of the *Act*.

Section 46(4)(a) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. As the Tenant has not paid the outstanding rent, I find that this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities remains in full force and effect. I therefore dismiss the Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

As the application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has long passed, I find that this tenancy ends on November 17, 2022, pursuant to section 44(1)(f) of the *Act*.

Section 55(1) of the *Act* stipulates 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Section 55(1.1) of the *Act* stipulates that if tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities the director must grant to the landlord an order requiring the payment of the unpaid rent if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an monetary Order, pursuant to section 55(1.1) of the *Act*, for unpaid rent in the amount of \$38,986.67.

The monetary Order for unpaid rent is calculated as follows:

- February of 2022 - \$2,150.00;
- March of 2022 - \$4,300.00;
- April of 2022 - \$4,300.00;
- May of 2022 - \$4,300.00;
- June of 2022 - \$4,300.00;
- July of 2022 - \$4,300.00;
- August of 2022 - \$4,300.00;
- September of 2022 - \$4,300.00;

- October of 2022 - \$4,300.00;
- November 01, 2022 – November 17, 2022 (pro-rated based on my conclusion that the last day of tenancy is November 17, 2022) - \$2,436.67

The Landlord is hereby directed to strictly comply with section 29 of the Act whenever the Landlord or any person acting on behalf of the Landlord wishes to enter the rental unit. For the benefit of both parties, section 29 reads:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I find that the Tenant has failed to establish the merits of this Application for Dispute Resolution and I dismiss the Tenant's application to recover the fee for filing the Application for Dispute Resolution.

Conclusion

The Tenant has failed to establish that he has the right to recover the cost of any emergency repairs, and I dismiss his application to recover those costs.

Pursuant to section 55(1) of the Act, I grant the Landlord an Order of Possession that is effective on **two days after it is served to the Tenant**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

Pursuant to section 55(1.1) of the Act, I grant the Landlord a monetary Order for unpaid

rent, in the amount of \$38,986.67. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The Landlord has the right, pursuant to section 71(2)(b) of the *Act*, to retain the Tenant's security and/or pet damage deposit in partial satisfaction of this monetary Order. The Landlord is not obligated to apply the deposits to this monetary Order, but the Landlord has that option.

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: November 17, 2022

Residential Tenancy Branch