



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR MNRT MNDCT**

Introduction

This hearing was convened as a result of the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated June 15, 2022 ("10 Day Notice") pursuant to section 46;
- an order for the Tenants to be paid by back by the Landlords for the cost of emergency repairs made by the Tenants pursuant to section 33(5); and
- an order for compensation for monetary loss or other money owed by the Landlords pursuant to section 67.

Both of the Landlords ("ND" and "SD") and one of the two Tenants ("NH") attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

NH stated the Tenants served the Notice of Dispute Resolution Proceeding ("NDRP") on the Landlords by text on July 7, 2022. ND stated the text did not provide all pages of the NDRP. ND stated he obtained a courtesy copy of the NDRP from the Residential Tenancy Branch on September 27, 2022. As such, I find the Landlords were sufficiently served with the NDRP and were deemed to have received it on September 30, 2020 pursuant to section 71(2)(b) of the Act.

Preliminary Matter – Service of Tenants’ Evidence on Landlords

NH stated the Tenants served evidence on the Landlords by text on July 7, 2022. ND denied the Tenants served the Landlords with any evidence. NH did not provide any evidence to corroborate her testimony that the Tenants’ evidence had been served by any method permitted by section 88 of the Act at any time prior to the hearing. I find, on a balance of probabilities, that the Landlords were not served with any evidence by the Tenants. As such, I will not admit any of the Tenants’ evidence they have submitted to the Residential Tenancy Branch (“RTB”) for the purposes of this hearing.

Preliminary Matter – Addition of Second Respondent to Application

NH requested I amend the Application to add SD as a respondent to the Application.

Rule 4.2 of the RoP states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

NH’s request for an amendment to the Application to add SD was consented to by the Landlords. As such, I hereby order the Application to be amended to add SD as a respondent to the Application.

Preliminary Matter – Severance and Dismissal of Tenants’ Claim

The Application included a claim for compensation for monetary loss or other money owed by the Landlords.

Rule 2.3 of the Rules 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.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the parties the primary issue in the Landlords' Application was to whether the Tenants were entitled to (i) cancellation of the 10 Day Notice and; (ii) an order for the Tenants to be paid back by the Landlords for the cost of emergency repairs made by the Tenants. As such, I severed and dismissed, with leave to reapply, the Tenants claim an order to see a for compensation for monetary loss or other money owed by the Landlords. The Tenants have the option of making a new application for dispute resolution to make a claim compensation for monetary loss or other money owed by the Landlords.

Issues to be Decided

- Are the Tenants entitled to cancellation of the 10 Day Notice?
- Are the Tenants entitled to an order for the Landlords to pay the Tenants back for emergency repairs performed to the rental unit by the Tenants?
- If the Tenants are not entitled to cancellation of the 10 Day Notice, are the Landlords entitled to an Order of Possession pursuant to section 55(1) of the Act and a monetary order for unpaid rent owing by the Tenants to the Landlords pursuant to section 55(1.1) of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application are set out below.

ND submitted into evidence a copy of the tenancy agreement dated May 20, 2022 ("Tenancy Agreement") between the Landlords and Tenants. The Tenancy Agreement states the tenancy commenced on May 20, 2020 with rent of \$2,500.00 payable on the 1st day of each month. The Tenants were required to pay a security deposit of \$1,250.00 by May 20, 2022. ND stated the Tenants paid the security deposit and that the Landlords were holding it in trust for the Tenants.

ND stated the 10 day Notice was served on the Tenants by email on June 15, 2022. NH acknowledged the Tenants received the 10 Day Notice by email on June 15, 2022 and they made the Application to dispute the 10 Day Notice. As such, I find the Tenants were sufficiently served with the 10 Day Notice on June 15, 2022 pursuant to section 71(2)(b) of the Act.

The 10 Day Notice stated the Tenants had rental arrears of \$2,500.00 as of June 1, 2022. ND stated the Tenants have not paid the rental arrears of \$2,500.00 for June 1, 2022 or any portion thereof. NH stated that in addition to the rental arrears for June 2022, the Tenants have not paid the rent for the months of July, August, September, October and November 2022. ND that, as of the date of this hearing, the Tenants have rental arrears of \$15,000.00, calculated as follows:

Date	Rent Owed	Paid	Balance
June 1, 2022	\$2,500.00	\$0.00	\$2,500.00
July 1, 2022	\$2,500.00	\$0.00	\$5,000.00
August 1, 2022	\$2,500.00	\$0.00	\$7,500.00
September 1, 2022	\$2,500.00	\$0.00	\$10,000.00
October 1, 2022	\$2,500.00	\$0.00	\$12,500.00
November 1, 2022	\$2,500.00	\$0.00	\$15,000.00
Total	\$15,000.00	\$0.00	\$15,000.00

NH acknowledged the Tenants did not pay the rent for the months of June through November 2022. NH stated the Tenants performed emergency repairs on the rental unit costing \$800.00 that included the costs of extermination services for cockroaches. I recited the categories of emergencies repairs set out in section 33(1)(c) of the Act and asked NH if any of the repairs the Tenants performed on the rental unit involved any of the items I listed. NH admitted that none of the repairs performed by the Tenants involved any of the items set out in section 33(1)(c) of the Act. NH stated that the Tenants thought emergency repairs encompassed cockroach infestations. NH stated the Tenants thought they did not have to pay rent because they thought they were

entitled to withhold rent until they were reimbursed for the emergency repairs and until the Landlords had performed other repairs to the rental unit.

Analysis

1. Order of Possession

Sections 46 and 53 of the Act state:

- 46(1) 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.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

NH acknowledged the Tenants received the 10 Day Notice on June 15, 2022. Pursuant to section 46(4), the Tenants had until 5- days, or until June 20, 2022, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the Residential Tenancy Branch indicate the Tenants made the Application on June 20, 2022. Accordingly, the Tenants made the Application within the 5-day dispute period required by section 46(4) of the Act

Section 26 of the Act states:

- 26 (1) 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, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Pursuant to s. 26(1) of the Act, a tenant must pay rent when it is due whether 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 stipulates a set of limited circumstances in which monies claimed by a

tenant can be deducted from rent, 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)); and
4. as ordered by the Director pursuant to sections 65 and 72.

Section 33(1) states:

- 33(1) In this section, "emergency repairs" means 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.

NH admitted that none of the repairs performed by the Tenants on the rental unit were for the purposes described in section 33(1)(c) of the Act. As such, I find the Tenants have not performed emergency repairs on the rental unit. NH acknowledged the Tenants have not overpaid the security deposit, made payments that were a result of a non-complaint rent increase or withheld rent pursuant to a pre-existing order from an arbitrator that authorized them to withhold all or any portion of the rent. As such, none of the circumstances listed above are presently applicable. As I have found the Tenants

did not incur any expenses to perform emergency repairs on the rental unit, I dismiss the Tenants' claim for the Landlords to reimburse the Tenants for \$800.00 for emergency repairs.

The failure of the Landlords to perform general repairs is not relevant to a determination of whether the 10 Day Notice should be cancelled because it is not an excuse allowed by the Act for the Tenants to withhold paying the rent to the landlords. The Act is unequivocal that the obligation to pay rent rests solely with the Tenants and makes no consideration for the circumstances described by the Tenants. The Act does not have any "hardship" provisions that would allow me to excuse the Tenants from paying the rent or delaying granting an Order of Possession to the Landlords.

NH stated the Tenants thought they had performed emergency repairs and, as a result, they did not have to pay rent because they had not been reimbursed and because the Landlords had not performed other repairs to the rental unit. Section 66 of the Act states:

- 66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.
- (2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) *[landlord's notice: non-payment of rent]* for a tenant to pay overdue rent only in one of the following circumstances:
 - (a) the extension is agreed to by the landlord;
 - (b) *the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.*
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

[emphasis in italics]

The amounts claimed by the Tenants for emergency repairs was \$800.00. The rental arrears for June 2022 were \$2,500.00. Although the Tenants believed they were entitled to deduct \$800.00 for emergency repairs, they would nevertheless be required to pay the remaining \$1,700.00 to the Landlords pursuant to section 26(1). As such, I find the Tenants are not entitled to an extension of time limit, pursuant to section 66(2) of the

Act, for the payment of the rental arrears for June 2022 because they did not pay the balance of rent of \$1,700.00 for the June. Based on the foregoing, I find the Tenants owed the Landlords \$2,500.00 for rental arrears on June 1, 2022, as stated in the 10 Day Notice. As such, I find there was a valid reason for the Landlords serving the Tenants with the 10 Day Notice. Based on the above, I find there is no basis upon which to cancel the 10 Day Notice. Accordingly, the Tenants' claim for cancellation of the 10 Day Notice is dismissed. As I have now dismissed all the Tenant's claims set out in the Application, I dismiss the Application in its entirety.

I have reviewed the 10 Day Notice and find that it complies with the form and content requirements of section 52 of the Act. Section 55(1) of the Act provides that, where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, then I must grant the landlord an Order of Possession. The parties agreed the Tenants have not vacated the rental unit. As such, pursuant to section 55(1) of the Act, I must grant the Landlords an Order of Possession of the rental unit. Pursuant to section 68(2)(a), I find the tenancy ended on November 4, 2022.

2. Monetary Order for Unpaid Rent

I find the I find that, pursuant to section 26(1) of the Act, the Tenants have rental arrears of \$15,000.00 for the months of June through November 2022 inclusive. The Tenants must compensate the Landlords this amount. Pursuant to section 55(1.1) of the Act, if a tenant's application is in relation to non-payment of rent and the application is dismissed, then the director must grant an order requiring payment of the unpaid rent. As such, pursuant to section 55(1.1) of the Act, I must order the Tenants pay the Landlords \$15,000.00 in satisfaction of the rental arrears.

Pursuant to section 72(2)(b) of the Act, the Landlords may deduct the Tenants' security deposit of \$1,250.00 from the rental arrears owed by the Tenants, leaving a balance of \$13,750.00.

Conclusion

The Application is dismissed in its entirety.

Pursuant to section 55(1) of the Act, I order that the Tenants deliver vacant possession of the rental unit to the Landlords within two days of being served with a copy of this decision and attached Order by the Landlords. This Order of Possession may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 55(1.1) of the Act, I order that the Tenants pay the Landlords \$13,750.00 representing the following:

Description	Amount
Rental Arrears	\$15,000.00
Security and Pet Damage Deposits Credit	-\$1,250.00
Total	\$13,750.00

It is the Landlords' obligation to serve this Order on the Tenants. If the Tenants does not comply with the Monetary Order, it may be filed with the Small Claims Division of the Provincial Court 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: November 5, 2022

Residential Tenancy Branch