



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNRT, MNDCT, RR, LRE, RPP, OLC, OPR, MNRL, FFL**

Introduction

This hearing dealt with an application by the parties pursuant to the Residential Tenancy Act ("the Act") for orders as follows:

The tenants applied for:

- cancellation of the landlords' 10 Day Notice to End Tenancy ("10 Day Notice") pursuant to section 46
- for a monetary order for compensation for emergency repairs pursuant to section 33
- for a monetary order for damage or compensation pursuant to section 67
- for an order to reduce rent for repairs, services, or facilities agreed upon but not provided pursuant to section 65
- for an order suspending or setting conditions on the landlord's right to enter to the rental property pursuant to section 70
- for an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62
- for an order requiring the landlord to return personal property pursuant to section 65

The landlord applied for:

- for an order of possession pursuant to section 55
- for a monetary order pursuant to section 67
- for reimbursement of the filing fee pursuant to section 72

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

The tenants confirmed receipt of the 10 Day Notice dated September 29, 2022, with an effective date of October 15, 2022. Pursuant to section 88 of the Act the tenants are found to have been served with this notice in accordance with the Act

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Preliminary Issues

Rule 2.3 of the RTB Rules of Procedure states that "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." This is also necessary to ensure an efficient dispute resolution process in which hearings are limited to one hour.

The tenants applied for orders for several other matters not related to the main issue of the 10 Day Notice. As they are not related to the dispute of the 10 Day Notice they are therefore severed pursuant to Rule 2.3 of the RTB Rules of Procedure. The tenants have leave to reapply on these issues. This decision does not extend any time limits set out in the Act.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenants? If so, is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to reimbursement for filing fees?

Background and Evidence

The tenancy commenced July 15, 2021. Rent is \$800.00 per month due on the first day of each month. Security and pet deposits were not paid. The tenants still occupy the rental property.

The landlord alleged that in June 2022 the tenants paid rent for May of \$700.00 which was \$100.00 short of the rent amount. The landlord further alleges that the tenants have not paid rent for June 2022 through December 2022. The tenants have also not paid utilities, however the landlord also stated that she has not served a 30-day notice on the tenants to pay utilities as required pursuant to section 46(6) of the Act. As a result, the landlords served the 10 Day Notice on the tenants on September 29, 2022. The landlord alleges that the tenants owed \$2,500.00 in unpaid rent as of the date the 10 Day notice was served, and as of the date of the hearing the tenants owed \$5,700.00 in unpaid rent.

The tenants did not dispute the amount of unpaid rent. However, the tenants stated that they withheld rent based on an agreement with the landlord. The tenants stated that they had a verbal agreement with the landlord that the tenants would undertake emergency repairs on the cabin and would be reimbursed by withholding rent. The tenants allege that the residence was uninhabitable between March 22, 2022, and May 19, 2022, and she lived in her travel trailer on the property. The roof and plumbing had major leaks and the floor of the cabin had to be removed to repair the damage. There were broken water lines and the cabin had sunk in spots. The tenants did not pay rent during that time, and thereafter, as their expenses to repair the property were much greater than the amount of rent withheld during the March to May time period. As such they continued to withhold rent to recoup the costs of the repairs according to their understanding of the verbal agreement with the landlord.

The landlord agreed that there was a verbal agreement to withhold rent during the time the tenants were unable to occupy the residence, March to May 2022. However, the tenants returned to the residence on May 19, 2022, and at that point rent was required to be paid. The residence was habitable at that point.

The tenants agreed that they returned to the rental property on May 19, 2022; however, they are claiming further outstanding expenses due emergency repairs and they withheld rent from June 2022 to December 2022 to recoup their costs.

The landlord denies agreeing to the further expenses claimed by the tenants and alleges that the repairs were not emergency repairs.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that

the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenants apply to cancel a Notice to End Tenancy.” In this case, the landlord has the burden of proving the validity of the 10 Day Notice served on the tenants.

The 10 Day Notice complies with the form and content requirements in section 52 of the Act. It is not in dispute that the tenants withheld rent. The dispute is whether the tenants was entitled to withhold rent after May 19, 2022.

Section 33 of the Act defines emergency repairs as being urgent, are necessary for health or safety or preservation or use of the property, and are to repairs items including leaks, and blocked water and sewer pipes

I am satisfied based on the evidence that the repairs done by the tenants were to repair major leaks in the plumbing and roof and were therefore emergency repairs.

The tenants are entitled to withhold rent for emergency repairs if the conditions in 33(5) of the Act are satisfied. The tenants did not provide evidence of how the conditions in section 33(5) of the Act were satisfied. The tenants were entitled to claim reimbursement from the landlord after providing the landlord with a written account of the repairs and cost accompanied by receipts.

While I am satisfied on the evidence that the tenants had receipts for the work completed, there was no evidence before me that the tenants provided a written account of the repairs to the landlord accompanied by receipts along with a claim for reimbursement. These requirements are a precondition to withholding rent under the Act. While I am satisfied based on the evidence of both parties that the tenants were not required to pay rent during the time that they had to vacate the rental property, there is no evidence before me that the landlord and tenants had any further agreement for payment for the repairs. In the absence of an agreement, the tenants were required to satisfy the conditions in section 33(5) of the Act.

The tenants did provide receipts in evidence in the hearing; however, they did not provide evidence that the receipts were provided to the landlord prior to withholding

rent. Under the Act, the tenants are only entitled to withhold rent after claiming reimbursement from the landlord and not receiving same.

I therefore find that the tenants' application disputing the 10 Day Notice is dismissed and the landlord is entitled to an order of possession for the rental property.

Under section 55(4) of the Act the landlord is entitled to monetary order for unpaid rent. I note that the parties agreed that no rent was to be paid while the tenants were not in the rental unit. They returned to the rental unit May 19, 2022 but paid \$700.00 rent for May. This is an overpayment as prorated rent from May 19 to May 30 amounts to \$286.00. The tenants therefore overpaid rent in May by \$414.00.

As the landlord is successful in their application, they are also entitled to recover the \$100.00 filing fee for the application.

Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order for \$5,286.00 in recovery of unpaid rent and the filing fee as follows:

Item	Amount
Unpaid rent July to December 2022 (7 X 800)	5,600.00
Less Rent overpayment May/June 2022	(414.00)
Filing Fee	100.00
Conclusion	\$5,286.00

The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: December 19, 2022

Residential Tenancy Branch