



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Albion Nursery Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNRT, MNDCT, RR, RP, AAT, PSF, LRE, AS, OLC, FFT

Introduction

This hearing dealt with an application for dispute resolution under the *Residential Tenancy Act* (the Act). On October 14, 2022, the tenant applied for:

- an order cancelling a 10 Day Notice for Unpaid Rent or Utilities, dated October 7, 2022;
- compensation for emergency repairs the tenant made during the tenancy;
- compensation for monetary loss or other money owed;
- a rent reduction for repairs, services, or facilities agreed upon but not provided;
- repairs made to the unit or property, having contacted the landlord in writing;
- an order for the landlord to allow access to the unit for the tenant and/or their guests;
- the landlord to provide services or facilities required by the tenancy agreement or law;
- an order to suspend or set conditions on the landlord's right to enter the rental unit;
- an order permitting the tenant to assign or sublet, the landlord's permission having been unreasonably withheld;
- an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement; and
- the filing fee.

Procedural History

This hearing was reconvened after being adjourned on November 29, 2022. This decision should be read in conjunction with the Interim Decision issued on November 29, 2022.

The Interim Decision and notices of reconvened hearing were sent to each of the parties at the email addresses they provided to the Residential Tenancy Branch (RTB).

The parties 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, and Rule 7.4 requiring evidence to be presented.

Neither party raised an issue regarding service of the hearing materials.

Preliminary Matter

The Residential Tenancy Branch's 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, all of the tenant's claims, with the exception of his claims for an order cancelling the 10 Day Notice, compensation for emergency repairs, and the filing fee.

Issues to be Decided

- 1) Is the tenant entitled to compensation for emergency repairs?
- 2) Is the tenant entitled to an order cancelling the 10 Day Notice?
- 3) If not, is the landlord entitled to an order of possession and a monetary order for unpaid rent?
- 4) Is the tenant entitled to the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

A copy of the tenancy agreement is submitted as evidence; it states that rent is \$3,000.00 a month. However, the parties agreed that rent is now \$2,600.00, and that for a portion of the tenancy the tenant was renting a house, as well as part of a

greenhouse, for \$3,000.00 a month, and at other times the tenant was renting only the house, for \$2,600.00 a month.

The tenant testified that as of August 2022, he was renting only the house, not the greenhouse, and that rent therefore was \$2,600.00. The tenant testified that he had a verbal agreement with the landlord that because by the end of July 2022 he had removed enough of his and his former housemate's possessions from the greenhouse, he was no longer renting the greenhouse and his rent would go back down to \$2,600.00.

The landlord testified that it was later, as of October 2022, that the tenant was renting only the house. Submitted as evidence by the landlord is a signed statement from the tenant, dated October 2, 2022, stating that effective that day he returns the greenhouse back to the landlord's use. The tenant confirmed that he had signed the statement.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The Notice states the tenancy is ending as the tenant failed to pay rent in the amount of \$6,550.00 due on October 1, 2022.

The landlord testified the 10 Day Notice was served on the tenant by email on October 7, 2022, and the tenant testified he received the Notice on October 7, 2022.

The landlord testified that as the garbage removal service ended on January 31, 2022, she made a deduction of \$300.00 (\$30/month for Feb to Nov 2022) from the amount owed by the tenant.

The landlord testified that the tenant owes outstanding rent as follows:

Month	Rent	Rent paid	Monthly outstanding
June 2020	3000	2800	200
July 2020	2600	1900	700
August 2020	2600	2000	600
September 2020	3000	2300	700
October 2020	3000	2400	600
November 2020	3000	2800	200
December 2020	3000	2500	500
January 2021	3000	4500	-1500
... rent paid in full for Feb 2021 to July 2022 ...			
August 2022	3000	2600	400
September 2022	3000	1500	1500
October 2022	2600	0	2600
November 2022	2600	0	2600
December 2022	2600	0	2600
Deduction of \$30.00/month, for Feb – Dec 2022 (11 x 30 = 330)			-330
Total			\$11,370.00

The tenant's testimony on rent paid and owing closely matched that of the landlord, with the following exceptions:

- The rent for June 2020 was \$2,600.00, not \$3,000.00, because the landlord said she would take \$400.00 off because the tenant was not using the greenhouse. The tenant testified he paid \$2,800.00 that month because he was trying to make \$3,000.00.
- The tenant testified that the rent for August and September 2022 should have been \$2,600.00, not \$3,000.00, per his verbal agreement with the landlord.

The tenant testified he was seeking compensation for emergency repairs he made during the tenancy. The tenant testified that the repairs included: fixing and buying batteries for a riding lawnmower, buying a lot of rat traps, fixing the stairs of a second entryway to the house, taking time off from work to admit a contractor who repaired the furnace, and working with the city when a pipe burst, causing water to get into the crawl space and into the basement. The tenant testified that regarding the bursting pipe, he was seeking compensation only for his time. The tenant testified that he had not given

the landlord a written account of the emergency repairs, accompanied by a receipt for each amount claimed.

Analysis

Section 33(5)(b) of the Act states that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

I find that most of the repairs the tenant has referenced are not emergency repairs as contemplated by section 33 of the Act, those being repairs that are urgent and necessary for the health or safety of anyone or for the preservation or use of residential property.

Considering the tenant seeking compensation for his time spent assisting with the repair of the burst pipe, because the tenant is not seeking reimbursement of an amount he paid for emergency repairs, and did not give the landlord a written account of the emergency repairs, accompanied by a receipt for any amount claimed, I do not find he was entitled to deduct an amount from rent or is entitled to compensation related to emergency repairs pursuant to section 33 of the Act.

Section 46(4) of the Act provides that upon receipt of a 10 Day Notice, the tenant may, within 5 days, dispute the Notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I find the 10 Day Notice was sufficiently served on the tenant by email on October 7, 2022, in accordance with section 71 of the Act. The tenant testified he received the 10 Day Notice on October 7.

I find that the landlord's 10 Day Notice meets the form and content requirements of section 52 of the Act, as it 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.

As the tenant applied to dispute the 10 Day Notice on October 14, 2022, I find that the tenant has failed to file an application for dispute resolution within 5 days of October 7, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ends on the effective date of the 10 Day Notice, October 20, 2022, and must vacate the rental unit.

The landlord is entitled to an order of possession.

As the tenant still resides in the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, December 5, 2022.

I find there was an agreement between the parties that the tenant would pay \$3,000.00 to rent the house and the greenhouse, and \$2,600.00 when renting the house only.

For the most part, the parties agree on the amount of rent owed to the landlord.

The parties disagree on what rent was for June 2020, August 2022, and September 2022.

The landlord testified that rent for June 2020 was \$3,000.00. The tenant testified that rent owing for June 2020 was \$2,600.00, but that he paid \$2,800.00. I favour the landlord's position on rent owing for June 2020, as it seems implausible that the tenant would pay more than he thought was owed for rent. Additionally, the tenant has submitted a summary of rent owing and paid which states that the rent owing for June 2020 was \$2,300.00, which contradicts his testimony.

Regarding the rent for August and September 2022, the tenant testified that rent for these months should have been \$2,600.00 because he had a verbal agreement with the landlord that by the end of July 2022 he was no longer renting the greenhouse.

The landlord testified that it was later, as of October 2022, that the tenant was renting only the house. Submitted as evidence by the landlord is a signed statement from the tenant, stating that effective October 2, 2022 he returned the greenhouse back to the landlord's use.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In this case, the onus is on the landlord, in accordance with Rule 6.6, which states that a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a notice to end tenancy.

As the landlord has submitted as evidence a document signed by the tenant, stating that they returned the greenhouse to the landlord's use on October 2, 2022, I find, on a balance of probabilities, the landlord's position on rent owing for August and September 2022 more likely than the tenant's. Thus, I find that the rent for August and September 2022 was \$3,000.00.

In accordance with section 55 of the Act, I find that the landlord is entitled to a monetary order for outstanding rent in the amount of \$11,370.00.

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

Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession which will be effective two days after it is served on the tenant.

The landlord is granted a monetary order in the amount of \$11,370.00.

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