



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GEC LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR-DR, CNR, MNDCT, MNRT, RR, MNR-DR, FFL

Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, the file number of which ends with the numbers 4327. In this Application for Dispute Resolution the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 05, 2022; for compensation for emergency repairs; for money owed or compensation for damage or loss; and for a rent reduction. The Tenant identified the Respondents with the initials “HH” and “JL” in this Application for Dispute Resolution.

“JL” stated that “JL” and “HH” are both agents for the commercial landlord named as an Applicant in the Landlord’s Application for Dispute Resolution.

The Tenant filed a second Application for Dispute Resolution, the file number of which ends with the numbers 3272. In this Application for Dispute Resolution the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 03, 2023; for compensation for emergency repairs; for money owed or compensation for damage or loss; and for a rent reduction. The Tenant identified the Respondents with the initials “HH” and “JJ” in this Application for Dispute Resolution.

The Landlord filed an Application for Dispute Resolution the file number of which ends with the numbers 5660. This Application for Dispute Resolution was initiated by way of

a Direct Request Proceeding but was adjourned to this participatory hearing by the Adjudicator who initially considered the Application for Dispute Resolution.

This participatory hearing was convened, in part, to consider the Landlord's application for an Order of Possession, for a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution. The Landlord is seeking an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 05, 2022.

The Tenant stated that Application for Dispute Resolution with the numbers ending in 4327 were sent to the Landlord, via email, although he cannot recall the date of service. "JL" acknowledged receipt of these documents. I therefore find these documents have been sufficiently served to the Landlord, pursuant to section 71(2)(c) of the *Residential Tenancy Act (Act)*.

The Tenant stated that Application for Dispute Resolution with the numbers ending in 3272 were sent to the Landlord, via email, although he cannot recall the date of service. "JL" acknowledged receipt of these documents. I therefore find these documents have been sufficiently served to the Landlord, pursuant to section 71(2)(c) of the *Act*.

"JL" stated that Application for Dispute Resolution with the numbers ending in 5660 and associated evidence was sent to the Tenant, via email, on January 06, 2023. The Tenant acknowledged receipt of these documents. I therefore find they have been sufficiently served to the Tenant, pursuant to section 71(2)(c) of the *Act*, and this evidence was accepted as evidence for these proceedings.

The Tenant submitted evidence to the Residential Tenancy Branch on December 09, 2022. The Tenant stated that he thinks this evidence was served with the Application for Dispute Resolution with the numbers ending in 4327. "JL" acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The Tenant submitted evidence to the Residential Tenancy Branch in January of 2023. The Tenant stated that he thinks this evidence was served to the Landlord, by email, on various occasions in January of 2023. "JL" acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The Tenant submitted evidence to the Residential Tenancy Branch in March of 2023. The Tenant stated that he thinks this evidence was served to the Landlord, by email, in

March of 2023. “JL” acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The Landlord submitted evidence to the Residential Tenancy Branch on April 21, 2023. “JL” stated that this evidence was served to the Tenant, by email, on April 21, 2023 and by posting it on his door of April 21, 2023. The Tenant stated that he received these documents on April 21, 2023 but he has not had sufficient time to consider them.

As the Landlord’s evidence was not served to the Tenant in accordance with the timelines established by the Residential Tenancy Branch Rules of Procedure and the Tenant has not had sufficient time to consider it, I decline to accept it 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 #1

At the outset of the hearing the Tenant requested an adjournment. He stated that he has recently developed “COVID-like” symptoms, he has a sore throat, and he does not feel well enough to participate in the hearing. He stated that he submitted no medical evidence that he was ill.

“JL” opposed the application for an adjournment, in part, because the Tenant did not submit medical evidence to show that his health prevented him from participating in the hearing.

“JL” opposed the application for an adjournment, in part, because the Tenant has not paid rent for March and April and the Landlord wants to avoid any further delays in ending the tenancy.

The Tenant coughed a few times while we were discussing the adjournment, however he could be clearly understood. I note that the Tenant stopped coughing after the request for an adjournment was denied. On the basis of the manner the Tenant represented himself at the hearing, I am satisfied that he was able to participate in the proceedings. I dismissed the Tenant's application for an adjournment, in part, because the Tenant failed to establish that he was physically unable to reasonably represent himself at the hearing.

I dismissed the Tenant's application for an adjournment, in part, because a further delay would be unfair to the Landlord. I find that an adjournment would result in an unreasonable delay and would be unfair to the Landlord, who is already owed rent for the last two months. An adjournment would likely delay these proceedings for another 6 to 8 weeks, which could result in the Landlord not receiving rent for several months.

Preliminary Matter #2

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 parties have 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 these Applications for Dispute Resolution is possession of the rental unit and I will, therefore, only consider issues related to that matter, which include:

- the Landlord's application for an Order of Possession;
- the Tenant's application to cancel two Ten Day Notices to End Tenancy for Unpaid Rent or Utilities;
- the Landlord's application for a monetary Order for unpaid rent;
- the Tenant's application to recover the cost of emergency repairs, as that could constitute grounds to withhold rent; and
- the application to recover the filing fee.

The Tenant's application for compensation for damage to personal property and a rent reduction for deficiencies with the rental unit are dismissed, with leave to re-apply, as they not sufficiently related to possession of the rental unit.

Preliminary Matter #3

"JL" applied to amend the Landlord's Application for Dispute Resolution to include unpaid rent from April of 2023. I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all the rent that is currently due, including unpaid rent that has accrued since the Landlord's Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include unpaid rent from April of 2023.

Preliminary Matter #4

On several occasions the Tenant attempted to reach a settlement agreement with the Landlord, however "JL" made it clear that the Landlord did not wish to do so.

Issue(s) to be Decided

Should either of the Two Ten Day Notices to End Tenancy for Unpaid Rent or Utilities be set aside?

Is the Landlord is entitled to an Order of Possession?

Is the Landlord entitled to a monetary Order for unpaid rent?

Is the Tenant entitled to compensation for emergency repairs and, if so, was he entitled to withhold rent in compensation for those repairs?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in 2021;
- the Tenant is currently required to pay rent of \$1,624.00 by the first day of each month;
- the Tenant did not pay the rent when it was due on December 01, 2022;
- a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 05, 2022, was posted on the Tenant's door on December 05, 2022;
- the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 05, 2022, declared the rent of \$1,649.00 was due, which included a \$25.00 late fee;
- rent for December of 2022 was paid, in full, on January 02, 2023;
- the Tenant did not pay the rent when it was due on March 01, 2023;
- a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 03, 2023, was posted on the Tenant's door on March 03, 2023;
- the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 03, 2023, declared the rent of \$1,649.00 was due, which included a \$25.00 late fee; and
- the Tenant has not paid rent for March or April of 2023.

The Tenant stated that he received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 05, 2022, on December 05, 2022. The Tenant stated that he received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 03, 2023, on March 03, 2023.

The Landlord and the Tenant agree that in 2021 water leaked into the rental unit through the ceiling, which created two holes in his ceiling.

The Tenant stated that:

- he reported the leak to the Landlord in March, April, and November of 2021;
- he is not certain, but he thinks the leak was caused by a plumbing issue;
- he made a "temporary" repair to two holes in his ceiling in November of 2021;
- he spent approximately \$100.00 for supplies to make this "temporary repair";
- he did not give the Landlord a copy of the receipt for those supplies until he served it to the Landlord as evidence for these proceedings; and
- he is seeking compensation for repairing these "emergency repairs".

"JL" stated that:

- the Tenant reported the leak to the Landlord on November 15, 2021;

- the leak was the result of a roofing issue;
- the roof was repaired within 2 days; and
- she was not aware that the Tenant made a “temporary” repair to his ceiling in November of 2021.

The Tenant stated that he was unable to pay his rent for March and April because he repaired damage to a storage area in the unit, which was damaged by his dog. He anticipates being able to pay all of his overdue rent in May of 2023.

Analysis

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.

Section 33(1) of the *Act* defines emergency repairs as:

- (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 undisputed evidence, I find that there was a leak that damaged the ceiling in the rental unit.

On the basis of the testimony of the Tenant, I find that he made a “temporary” repair to the ceiling. I find that this does not constitute an “emergency repair” as it was not made

for the purpose of repairing anything identified in section 33(1) of the *Act*. While I accept that the drywall in the Tenant's ceiling was damaged by a leak, repairing the resulting damage is not a repair that was made for repairing a "major leak in pipes or the roof".

As the "temporary repairs" made to the ceiling do not constitute an "emergency repair", I dismiss the Tenant's application to recover the cost of repairing the holes in his ceiling.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord 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.

On the basis of the undisputed evidence, I find that the Tenant did not pay rent when it was due on December 01, 2022.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, was served to, and received by, the Tenant, on December 05, 2022.

Section 46(3) of the *Act* stipulates that 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.

Section 33(7) of the *Act* authorizes a tenant to deduct the cost of emergency repairs from rent if the landlord does not reimburse the tenant for the cost of emergency repairs. As I have concluded that the temporary repair to the ceiling does not constitute an "emergency repair" and the Tenant has not established he made any other emergency repairs, I find that the Tenant did not have a legal right to withhold rent as a result of emergency repairs. The Tenant submitted no evidence to establish that he has written authority, from the Residential Tenancy Branch, to withhold rent. As the Tenant has submitted insufficient evidence to establish that he had the right to withhold any rent in December of 2022, I find that section 46(3) of the *Act* does not apply in these circumstances.

Section 46(4) of the *Act* stipulates that a notice under this section has no effect if within 5 days after receiving a notice under this section, the tenant pays the overdue rent, in

which case the notice has no effect. As the Tenant did not pay the overdue rent within 5 days of receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 05, 2022, I find that section 46(4) of the *Act* does not apply in these circumstances.

As the Tenant has not establish grounds to withhold rent and he did not pay all of the rent that was due on December 01, 2022 within 5 days of received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 05, 2022, I find that the Landlord has grounds to end the tenancy on the basis of this Notice. I therefore grant the Landlord an Order of Possession and I dismiss the Tenant's application for cancel this Notice.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, was served to, and received by, the Tenant, on March 03, 2023. As the Tenant has not yet paid the rent due for March of 2023, the Tenant's application to cancel this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed for the same reasons outlined above. There is no need to grant an Order of Possession on the basis of this second Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, as the Landlord does not require two such Orders.

On the basis of the undisputed evidence, I find that the Tenant did not pay rent for March or April of 2023. As the Tenant has failed to establish that he has any legal right to withhold rent and he remained in the rental unit, I find that the Tenant must pay the Landlord \$3,248.00 in rent for those months.

In reaching this conclusion I placed no weight on the Tenant's explanation that he was unable to pay his rent for March and April because he spent money repairing damage to a storage area in the unit, which was damaged by his dog. While I sympathize with the Tenant for his financial difficulties, personal hardships are not grounds for withholding rent.

In reaching this conclusion I placed no weight on the Tenant's submission that he will be able to pay all of his overdue rent in May of 2023. This is not relevant to the issues in dispute at these proceedings.

I find that the Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant's application to cancel the Ten Day Notices to End Tenancy for Unpaid Rent or Utilities are dismissed.

The Landlord's application for an Order of Possession is granted. The Landlord is granted an Order of Possession that is effective two days after it is served upon 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.

The Landlord has established a monetary claim, in the amount of \$3,348.00, which includes \$3,248.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. I grant the Landlord a monetary Order for \$3,348.00. 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.

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: April 29, 2023

Residential Tenancy Branch