



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNRT, RP

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities, (the “Notice”) dated March 26, 2023, for a monetary order to recover their costs for emergency repairs and for an order to repair the rental unit, and for an order for repairs. The matter was set for a conference call.

Both the Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Issues to be Decided

- Should the Notice dated March 26, 2023, be cancelled?
- If not, is the Landlord entitled to an order of possession and a monetary order for unpaid rent?
- Is the Tenant entitled to a monetary order to recover their costs for emergency repairs?
- Should the Landlord be ordered to make repairs to the rental unit?

Preliminary Matter – *Related Issues*

I have reviewed the Tenant's application, and I note that they have applied to cancel a Notice to end tenancy as well as several other issues. I find that one of these other issues is not related to the Tenant's request to cancel the Notice. As this other matter does not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which 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.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Tenant's claim for an order for the Landlord to make repairs to the rental unit.

I will proceed with this hearing on the Tenant's remaining claims before me.

Background and Evidence

While I have considered all of 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.

Both parties agreed that the tenancy began on February 15, 2022, as a month-to-month tenancy. Rent in the amount of \$2,400.00 is to be paid by the 15th day of each month and the Landlords collected a security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00 pet at the outset of this tenancy. Both parties submitted a copy of the tenancy agreement into documentary evidence.

The Landlords testified that they served the Notice to the Tenant on March 26, 2023, by posting it on the front door of the rental unit. The Notice recorded an effective date of April 4, 2023, and an outstanding rent amount of \$6,000.00. The Landlords also testified that the Tenant had not paid the outstanding rent as indicated on the Notice. The Landlord agreed that they had made a calculation error on the Notice and that the outstanding rent at the time the Notice was issued was \$4,800.00. Both parties submitted a copy of the Notice into documentary evidence.

The Landlord testified that the Tenant had paid \$500.00 in rent on April 5, 2023, but that they had also not paid the rent payment due on April 15, 2023. The Landlord requested an order of possession to the rental unit and a monetary order for the outstanding rent due for this tenancy.

The Tenant testified that they had deducted their costs associated with emergency repairs from the February, March, and April rents due for this tenancy.

The Tenant testified that the Landlord didn't respond to them regarding their constant attempts to have things repaired in their rental unit. The tenant submitted a list with costs of the repairs they had completed to the rental unit totalling \$22,904.20, into documentary evidence.

The Tenant was asked to provide the receipts of the repair bills they had paid, the Tenant testified that they completed most of the repairs themselves and that they provided quotes to substantiate the deductions to the rent they had made. The Tenant submitted 170 documents into evidence to substantiate their deductions to the rent.

The Tenant submitted that they were within their right to deduct their emergency repair costs from the rent as the Landlord had refused to make the required repairs to the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

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.

(5) *If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant*

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit to which the notice relates by that date.

I accept the Landlord's testimony, that the Notice was posted to the front door of the rental unit on March 26, 2023. Pursuant to the deemed served provisions set out in section 90 of the *Act*, and I find that the Tenant received the 10-Day notice, three days

later on March 29, 2023. Accordingly, the Tenant had until April 3, 2023, to either pay the amount outstanding indicated on the Notice or file to dispute the Notice. I have reviewed the Tenant's application and I find that they did apply to dispute the Notice on March 31, 2023, within the legislated timeline.

I accept the agreed upon testimony of both parties that the rent for February and March 2023, had not been paid when this Notice was issued by the Landlord.

The Tenant submitted that they had deducted costs for emergency repairs from the February and March rent, as permitted under sections 33 and 46(3) of the *Act*. The Tenant submitted that they had personally made several repairs to the rental unit due to the Landlord's failure to affect the repairs after multiple attempts to get the needed repairs completed, to the yard fence, the garage door, the front and back doors of the rental unit, a home security system, garbage dump, lost food, carpet and trade cleaning services, a leaking faucet and a mouse infestation.

Section 33 of the *Act* speaks to emergency repairs, stating the following:

Emergency repairs

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.*

I have reviewed the totality of the Tenant's documentary evidence regarding the emergency repairs they are claiming for, and I find that the repairs to the defective locks, on the garage door, and the front and back doors do fall under section 33 of the *Act*. However, I also find that the remainder of the repairs listed on the Tenant's account of emergency repairs, fall under section 32 of the *Act*, do not meet the definition

of an emergency repair, and cannot be used to substantiate why the Tenant withheld the rent for February and March 2023 for this tenancy.

Section 33(3) of the *Act* sets out the conditions when a tenant may conduct emergency repairs to the rental unit, stating the following:

Emergency repairs

33 (3) *A tenant may 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.*

I accept the testimony of the Tenant that they made at least two attempts to contact the Landlord to advise them of the defective locks and that they provided the Landlord with a reasonable amount of time to conduct the emergency repairs before they acted to conduct the repairs themselves.

Section 33(5) of the *Act* requires that a Landlord reimburse a tenant for amounts paid by the tenant for emergency repairs, stating the following:

Emergency repairs

33 (5) A landlord must 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.

I accept the testimony of the Tenant they did repair the damaged doors themselves, however, I can find no record of the Tenant submitting a written request to the Landlord for repayment that included receipts, for the amounts paid for parts and labour to conduct the emergency repairs to the defective locks for the rental unit.

I did find one receipt in the Tenant's evidence for door parts in the amount of \$115.50; however, I noted that the date on that receipt was April 23, 2023, well after the February

and March 2023, rents were due for this tenancy, and therefore this receipt could not be used to substantiate why the Tenant withheld the rent for February and March 2023.

I also noted that the Tenant has provided several quotes for what it would cost to have a professional door repair completed, but they have not provided a detailed calculation of their actual costs for parts or their labour to repair the defective locks to the rental unit.

On the point of personal labour costs, I acknowledged that the Tenant might be due some compensation due to the required emergency repair of the rental unit; however, I find that the Tenant would need to either come to a mutual agreement with the Landlord as to the amount of compensation due for their labour or apply for a dispute resolution hearing and have an Arbitrator award them compensation, as I find that a bill to the Landlord for the Tenant's time in dealing with the repairs does not meet the definition of an "amount paid" by the Tenant to conduct emergency repairs, pursuant to section 33(5).

For the reasons stated above, I find that the Tenant was not within their rights, to withhold the rent for February and March for this tenancy.

Therefore, I find that the Tenant is in breach of section 26 of the *Act* by not paying the rent in accordance with the tenancy agreement and I dismiss the Tenant's application to cancel the Notice.

Section 55(1) of the *Act* states:

Order of possession for the landlord

55 (1) 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

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(b)the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I have reviewed the Notice to end tenancy and noted that the Landlords made a calculation error in the recorded amount of rent outstanding on page two of this Notice. Pursuant to section 68 of the *Act*, I find it reasonable to amend this notice, as the parties to these proceedings knew, or should have known, the amount of rent due each month for this tenancy, and the Tenant to whom this Notice was issued, agreed during these proceedings, that they did not pay the for the period indicated on this Notice. Therefore, I find that this Notice complies with section 52 of the *Act*.

Consequently, I find that the Landlords are entitled to an order of possession effective two days after service of the order on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. The Tenant are cautioned that the costs of such enforcement are recoverable from the Tenant.

I also accept the agreed-upon testimony of these parties that the Tenant has not paid the full outstanding rent for the months of February 2023, March 2023, and April 2023, for this tenancy. I find that the Landlords have also proven their entitlement to a monetary award in the amount of \$6,700.00 for the outstanding rent. I grant permission to the Landlords to retain the security and pet damage deposits for this tenancy in partial satisfaction of this award.

I grant the Landlord a monetary order in the amount of \$4,300.00, consisting of \$6,700.00 in unpaid rent, less the security deposit of \$1,200.00 and the pet damage deposit of \$1,200.00 that the Landlords are holding for this tenancy.

Conclusion

The Tenant's Application to cancel the Notice, dated March 26, 2023, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlords effective **two days** after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlords a **Monetary Order** in the amount of **\$4,300.00** for the outstanding rent, less the security and pet damage deposits the Landlords are holding. The Landlords are provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in 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: April 27, 2023

Residential Tenancy Branch