



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, OLC, FFT

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Cancellation of a 10-day Notice to End Tenancy for Unpaid Rent, issued on or about 15 March 2023 [the 'Notice'].
2. Requirement that repairs be made to the rental unit [the 'Repair Claim'].
3. Requirement that the landlords comply with the *Residential Tenancy Act* [the 'Act'] or the tenancy agreement [the 'Compliance Claim'].
4. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing on 1 May 2023. The tenants also appeared.

Preliminary Matters – Severance of Claims

Rule 2.3 of the RTBs Rules of Procedure stipulates 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.'

In light of this rule, I asked the tenants how the Repair Claims and the Compliance Claims related to the Notice. This is what they told me...

The Repair Claim

When I asked the tenants what the nature of the order was that they were seeking, they told me that they wanted me to order the landlords to remove mould from the ceilings,

and repair holes in the ceilings and walls. Also, they wanted the landlords to reimburse them for repairs that they made on their own to the unit.

I asked how this claim was related to the Notice, and the tenants told me that because of the repairs that they made, it would be unfair to have them move out.

I do not find that the fact that the tenants may have made repairs to the unit is related to the Notice, which relates to unpaid rent. Had the tenants made emergency repairs, then they might be entitled *per* section 33 of the Act to withhold rent. But nothing that the tenants told me about the repairs indicated that they were emergency repairs. And so that issue is unrelated to the issue of whether they paid rent.

The Compliance Claim

When I asked the tenants what the nature of the order was that they were seeking, they told me that they wanted me to order that the landlords repay them for the cost of appliances that they had to buy, and for work that they did around the unit.

When I asked what the amount of this claim was, the tenants told me that it was \$9,000.00. But, they cautioned, they hadn't, 'gotten around to adding it all up.' When I told the tenants that today was the day to add it all up, they replied, after a pause, that the total claim was \$14,000.00. I noted that the tenants had not proffered any receipts or invoices in support of this claim.

When I asked the tenants how this claim was related to the Notice, they told me that, 'We're tenants, and this is where we live.'

I do not agree that the tenants' claim for \$14,000.00 in appliances and work on the unit is related to the Notice. The tenants did not provide compelling evidence that any of the work was for emergency repairs, such that the tenants could argue they had withheld rent in compensation for that work.

For greater clarity, I include here section 33 (1) of the Act, which defines emergency repairs as, '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.

Issues to be Decided

This leaves me with two issues to determine:

Should I cancel the Notice?

Should the landlords reimburse the tenants for the cost of filing this application?

Background and Evidence

The parties agreed that (based on a photograph of a document that the landlords proffered), the tenancy:

1. began October 2022;
2. was for \$3,600.00 rent *per* month, due on or before the first day of each month;
3. included a \$1,800.00 security deposit (which the tenants duly paid to the landlords); and
4. was between the landlords and the tenants, each of whom signed the document.

During the hearing, the tenants called two witnesses ['Witness 1' and 'Witness 2'], each of whom suggested that they, too, were tenants, as they lived in the unit with the tenants. The landlords, however, denied that these witnesses were tenants (and there was no application before me to add parties to the tenancy agreement).

The landlords told me that in January this year, the tenants only paid \$2,900.00 of the \$3,600.00 owing. Then in February they paid no rent at all.

And when at the beginning of March the tenants again paid nothing at all, the landlords issued the Notice.

The landlords affirmed the following details about the Notice:

1. they signed and dated it 15 March 2023;
2. they recorded the effective date as 27 March 2023;
3. they accurately recorded the address of the rental unit;
4. they cited as the basis for the Notice \$8,000.00 of unpaid rent, due 1 February, and \$300.00 of unpaid utilities, pursuant to a demand they issued 20 March 2023; and
5. they handed it to Witness 1.

They corroborated these details with photographs they took of the Notice, and the tenants did not dispute the accuracy of these details.

I asked the landlords about details of the demand for the utilities referred to in the Notice, but they didn't know any: all they could tell me is that they thought they issued a demand.

After receiving the Notice, Witness 1 swore to me that he paid the landlords \$300.00. The landlords agreed that they received \$300.00 from Witness 1. Witness 1 said that he paid this money so that he and the tenants wouldn't have to move out.

Come April, the landlords told me that, again, the tenants paid nothing.

For their part, the tenants conceded that they did not pay rent, just as the landlords had described. They also said that they had not yet paid rent for May but would do so before the end of the day.

When I asked the tenants why they did not pay rent, they told me that they had read 'somewhere online' that rent should not be paid pending an arbitration. They said that there was no other reason they did not pay rent.

Witness 1 told me that the tenants did not have money to pay rent because they had spent it on cleaning mould out of the bathrooms and carpets and off the walls.

Witness 2 told me that the tenants did not pay rent because of repairs they paid for, in particular, repairs they had to make to a water filter and septic tank. This witness

echoed Witness 1 by saying that the tenants spent the rent money on these repairs. Neither witness told me about the nature of the repairs; the cost of the repairs; or even who made the repairs. The landlords did not proffer any receipts or invoices pertaining to such repairs.

Analysis

I have considered all the evidence proffered by the parties. And I have considered all the arguments made by the parties.

Section 26 (1) of the Act places a positive obligation upon the tenants to pay rent, with which they have not complied. The tenants conceded in their evidence that they failed in this obligation, and they have continued to fail in this obligation. They offered no justification under the Act for failing in this obligation. Their evidence that they spent the money on non-emergency repairs, or that they didn't pay rent because of a pending arbitration, does not support cancelling the Notice.

As a result, I find that the tenancy is at an end, effective 27 March 2023. I also find that the tenants owe the landlords the following amounts:

- \$700.00 for January rent;
- \$3,600.00 for February rent;
- \$3,300.00 for March rent (considering the \$300.00 given by Witness 1 to the landlords that month); and
- \$3,600.00 for April.

This totals \$11,200.00.

I note that, though the Notice included \$300.00 for unpaid utilities, the landlords' evidence did not satisfy me that they had issued a written demand to the tenants for payment of these utilities 30 days before claiming this amount as unpaid rent (see section 46 (6) of the Act).

And because the tenants have failed in their application, I do not order the landlords to reimburse the tenants for the cost of this application.

Conclusion

I dismiss the Repair Claim, with leave to re-apply. In doing so, I do not make any finding on the merit of the tenants' claim: only that this claim is unrelated to the issue of unpaid rent.

I also dismiss the Compliance Claim, with leave to re-apply. Again, I do not make any finding on the merit of the Compliance Claim: only that this claim is unrelated to the issue of unpaid rent.

I make an Order of Possession in favour of the landlords. This order is effective two days after the landlords serve it upon the tenants. If the tenants or any occupant of the rental unit fails to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

I also order that the tenants pay to the landlords \$11,200.00 for unpaid rent *per* section 55 (1.1) of the Act.

I authorise the landlords to retain the tenants' security deposit of \$1,800.00 in partial satisfaction of this sum *per* section 72 (2) (b) of the Act.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlords may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlords can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 23 May 2023

Residential Tenancy Branch