



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

The Tenant applied for dispute resolution (“Application”) and seeks an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing. The Landlord, M.S., attended the hearing and authorized their Agent, I.S., to speak on their behalf. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant testified they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlord via email. The Landlord confirmed receipt of the Materials and raised no issues with service. I find that pursuant to sections 89 and 90 of the Act that Tenant’s Materials were sufficiently served to the Landlord.

I.S. stated the Landlord’s evidence was served on the Tenant via email one day before the hearing. The Tenant testified they had not received the Landlord’s evidence. Rule 3.15 of the *Rules of Procedure* states that respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. Therefore, I exclude the Landlord’s evidence from consideration.

Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on July 1, 2022.
- Rent is \$1,600.00 per month due on the first day of the month.
- A security deposit of \$1,000.00 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement which was entered into evidence.
- The Tenant still occupies the rental unit.

I.S. testified as follows. The Notice was issued as the Tenant was not paying rent on time. The Tenant had paid late a couple of times and was given opportunities but never paid the full amount, paying in a piecemeal way. The arrears added up over the months.

M.S. testified that they had chased the Tenant for rent via text messages and served the Notice on March 14, 2023 by attaching it to the door of the rental unit. The rental arrears listed on the Notice was \$3,200.00, as of March 1, 2023. Only the first page of the Notice was entered into evidence by the Tenant. It is signed March 14, 2023 and provides an effective date of March 31, 2023.

Since the Notice was issued, one payment was made on March 23, 2023 amounting to \$935.00. This payment was made by the Provincial Government, not the Tenant. As of May 1, 2023, the total rental arrears stands at \$5,465.00. They seek a Monetary Order for unpaid rent and an Order of Possession.

The Tenant testified as follows. They lost their job four months ago and relied on social assistance since then. They had also been admitted to hospital. When they returned to the rental unit, they found the front door had been kicked in. They replaced the front door at their own expense which cost \$5,000.00. They also replaced the washer and dryer at their own expense.

The costs were incurred around a month and a half ago. They stated they assumed the costs would come off the rent and sent receipts to the Landlord after they had made payment.

The Tenant agreed that the Notice stated rental arrears as of March 1, 2023 was \$3,200.00 but though he was in credit for rent due to the payment for the door and did not have to pay the amount on the Notice. They agreed that payments for rent on April 1, 2023 and May 1, 2023 were not made and that the Provincial Government made the payment of \$935.00.

In response to the Tenant's submissions, the Landlord testified as follows. They never heard from the Tenant regarding damage to the door and didn't get any invoices or receipts from the Tenant. They found out the Tenant had changed two doors at the rental unit and had asked the Tenant why this happened with no reply. They did not receive any notifications from either the Tenant or the tenant in the upstairs unit regarding the washer and dryer.

I.S. also testified that they learned the Tenant had added a metal gate to the front door which was not part of the property originally.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent.

The Act sets out limited circumstances in which monies claimed by the tenant can be deducted from rent, which include:

- when a tenant has paid a security or pet deposit above the allowed amount;
- reimbursement of costs incurred by the tenant for emergency repairs;
- when a landlord collects rent for a rent increase that does not comply with the *Residential Tenancy Regulation*;
- if the landlord gives authorization to not pay rent; or
- as ordered by the Director.

The Tenant testified they did not pay rent as they had incurred expenses repairing the door of the rental unit and replacing the washer and dryer. Whilst section 33(7) of the Act does state that if a landlord does not reimburse a tenant for emergency repairs, the

tenant may deduct the amount from rent, there are conditions to be met before deductions from rent can be made by a tenant.

Firstly, the repairs must be deemed “emergency repairs” which, for the purposes of section 33 of the act are repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property and must fall into a category of repair set out in section 33(1)(c) of the Act. Washer and dryer repair would not fall into the category of emergency repairs, though damaged or defective locks that give access to a rental unit would, per section 33(1)(c)(iv) of the Act.

Secondly, a tenant may have the repairs made when emergency repairs are needed, if at least two attempts to telephone the number provided as the person to contact for emergency repairs are made and following those attempts, the tenant has given the landlord reasonable time to make the repairs. The Tenant put forward no evidence to indicate they attempted to telephone the Landlord to notify them of the issue with the door before incurring the expense. Per the Tenant’s testimony, they paid for the repairs before informing the Landlord.

Thirdly, a landlord would have to reimburse a tenant if the tenant claims reimbursement for the emergency repairs from the landlord and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. The Landlord denied receiving any such written account of costs incurred by the Tenant. The Tenant did not submit into evidence any record of a written account of costs, or of them being provided to the Landlord.

I find on the balance of probabilities that the Tenant failed to notify the Landlord of the requirement for repairs, failed to prove that the amounts paid represent a reasonable cost for the repair and failed to provide a written account of the repairs to the Landlord. Accordingly, I find that the Landlord is not required to reimburse the Tenant for the costs in accordance with section 33(6) of the Act.

As I find that the Tenant did not have a valid reason under the Act to deduct any amount from the rent, I am satisfied that rent in the amount of \$1,600.00 was due on March 1, 2023.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Both the Landlord's evidence and the Tenant's own testimony show that the Tenant did not pay the rent on March 1, 2023. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act. As a result, the Tenant's Application to cancel the Notice is dismissed without leave to reapply.

Based on the above findings, the Landlord is granted an Order of Possession under section 55(1) of the Act. A copy of the Order of Possession is attached to this Decision.

The Tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on March 31, 2023 in accordance with the Notice.

Since the Application relates to a section 46 notice to end tenancy, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$5,465.00 in unpaid rent to the Landlord.

Under section 38(4)(b) of the Act, the Landlord is ordered to retain the security deposit in partial satisfaction of the payment order. A Monetary Order for the remaining amount is attached to this Decision and must be served on the Tenant.

Conclusion

The Application is dismissed without leave to reapply.

The Landlord is issued an **Order of Possession**. It is the Landlord's obligation to serve the Order of Possession on the Tenant. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

The Landlord is issued a **Monetary Order**. It is the Landlord's obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	Amount
Unpaid rent	\$5,465.00
Less: security deposit	(\$1,000.00)
Total	\$4,465.00

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 05, 2023

Residential Tenancy Branch