



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RR, ERP, RP, OLC

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Tenant's application to cancel two 10-Day Notices for Unpaid Rent and Utilities (Notice).

Preliminary Matters

At the start of the hearing, the Tenant advised that she was moving out within the next hour, and that she had a portable storage container with her items on the rental unit driveway which the provider would pick-up before the end of business June 5, 2023. The Tenant refused to participate in a final walk-through inspection with the Landlord before her departure and stated she would provide a forwarding address to the Landlord at a later date. The Tenant agreed that she would leave the keys to the rental unit in the Landlords' mailbox within an hour of leaving the rental unit.

The Tenant's departure from the rental unit and relinquishment of possession remove from consideration her request that the Notices be canceled. As a consequence, the Tenant's applications that the Landlords make repairs including emergency repairs, or comply with the Act, are no longer at issue.

Issues to be Decided

1. Did the Tenant fail to pay rent when due?
2. Did the Tenant make emergency repairs and is the Tenant entitled to rent reduction for emergency repairs?

Background and Evidence

The tenancy commenced on July 15, 2022 for a fixed term until January 31, 2023. The parties entered into a second rental agreement for the fixed term from February 1, 2023 to June 30, 2023. The monthly rent was \$3,000.00 payable on the first day of each month. The Tenant paid a \$1,500.00 security deposit which the Landlords retain.

By the time of the hearing, the Landlords had issued two Notices to the Tenant dated:

1. April 17, 2023 – unpaid rent of \$3,000.00 due April 1, 2023 with a move-out date of April 30, 2023; and,
2. May 2, 2023 – unpaid rent of \$3,000.00 due May 1, 2023 with a move-out date of May 16, 2023.

The Tenant applied in time for dispute resolution to cancel each Notice. Copies of the Notices were provided in evidence. Both Notices were served by posting on the door of the rental unit, and proof of service was submitted into evidence.

April 2023 Rent

The Tenant testified she did not pay rent in April due to a plumbing issue. She described the plumbing as draining very slowly. The Tenant stated that she contacted the Landlords about the issue but also had a plumber come to the rental unit. That plumber advised her that roots may be clogging the drain and estimated the cost of repair to be \$611.49, including taxes. The Tenant testified that she did not hire any plumber or any other emergency repair provider for this issue.

The Tenant further testified that she attempted to partially pay April rent. She stated that Maple Ridge Rent Bank had provided \$2,258 toward her April rent. She testified that she attempted on two occasions to pay the rent but the Landlords refused. On the first attempt, sometime in mid to late April, the Tenant said she went to the Landlords' home. When they did not answer the door, she did not want to leave it in their mailbox. On the second attempt, she testified that she wanted a receipt but the Landlords would not provide one.

The Landlord O.K. testified that the first notice from the Tenant regarding a plumbing issue was August 29, 2022. At that time, the Landlords hired a plumber who discovered that the Tenant had been flushing wipes which resulted in the clog. The Landlord stated

that they received no further complaint from the Tenant about the plumbing until February 7, 2023. The Landlord testified that the Tenant's failure to clear leaves at her front door coupled with an unusually heavy rainfall resulted in some water entering the rental unit. The Landlord stated that they tended to the problem by clearing the leaves, and noted at the time that the water in the rental unit was clear.

The Landlord testified that they had a plumber return to the rental unit on April 21, 2023 and found no issue with the plumbing.

Concerning the Tenant's testimony to pay partial rent for April, 2023, the Landlord testified that they were not home when the Tenant came to their home to pay rent. The Landlord explained that the receipt they had prepared and offered to the Tenant on the second attempt was not accepted by the Tenant who offered her own version of a receipt that listed repair conditions. The Landlord testified that the repair conditions on the receipt as a condition to receiving rent was not acceptable and in any event, a receipt was only necessary for cash rent payments. Finally, the Landlord stated that she contacted Maple Ridge Rent Bank who informed her that it had canceled the cheque and would not re-issue as the Tenant was not eligible.

May 2023 Rent

The Tenant admitted she had not paid rent on the basis that requested repairs to the plumbing and additional damage (mould) had not been made. The Landlord testified that on May 4 a plumber they hired had run a camera through the plumbing had found no blockage in the pipes.

June 2023 Rent

During the hearing, the Tenant stated that she had also received a third Notice for unpaid rent due June 1 but would not pay because the repairs she requested had not been made, and the rental unit had developed a peculiar smell. The Landlord reiterated that plumbing repairs had been made and they had not received any further complaint from the Tenant since April.

Analysis

Section 46(1) of the Act provides that 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.

Section 52 of the Act sets forth the requirements for a valid notice to end a tenancy. I find that the Notices issued by the Landlord were proper under the Act and were served on the Tenant as required by the Act.

I further find that there is no contested issue between the parties that the Tenant has not paid rent for April, May and June 2023.

Section 33 of the Act addresses emergency repairs during a tenancy. “Emergency repairs” are those that are urgent and necessary to protect personal health, safety or preservation of property. Additionally, the repair is limited to certain enumerated circumstances, which includes damaged or blocked water, sewer or plumbing fixtures. The tenant must provide notice to the landlord. Relevant to this matter, the tenant may be reimbursed the cost of the emergency repair if a written account is given to the landlord together with a receipt for the repair work.

The Tenant did not provide sufficient evidence to find that the plumbing problem posed an urgent risk of harm to person or property. The incidents described during the hearing were isolated and did not pose a risk of harm to any occupant or to property.

The Tenant admitted she did not pay for any emergency repairs. As such, she is not entitled to have any amount deducted from her rent. Moreover, the Landlord provided credible evidence that the “flooding” the Tenant complained of was a result of the Tenant’s own conduct. The water intrusion caused by leaves piled at the front door during a heavy rainfall was minimal and did not pose harm to person or property. Similarly, there was no evidence any slow-moving drain backed up and caused water intrusion into the unit. The Tenant did not provide evidence that the plumbing was obstructed that would warrant a rent reduction.

I find the Tenant’s explanation for not paying rent was not justified under the Act. Section 67 of the Act provides that an order may be made for loss or damage resulting from a party not complying with the Act. I find the Landlord is entitled to an order for loss of three months’ rent.

Conclusion

The Tenant's application is denied without leave to reapply. I find the tenancy is terminated the date of this hearing, June 5, 2023, and that the Landlords are entitled to unpaid rent as set forth below.

I make a monetary order for the Landlords in the amount of \$7,487.50, calculated as follows:

- \$9,000.00 in unpaid rent;
- less an offset of the security and deposit in the amount of \$1,500.00 plus \$12.50 interest owed on the deposit.

The Landlords are provided with an Order on the above terms. Should the Tenant fail to comply with this Order, the Order may be filed and enforced as an Order of the Provincial Court of British Columbia.

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: June 06, 2023

Residential Tenancy Branch