



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNRT, RR, RP, LRE, OLC, FFT, OPR-DR, MNR-DR, FFL

Introduction

This dispute relates to the Tenant's April 29, 2023 Application for Dispute Resolution seeking remedy under the *Residential Tenancy Act* (Act) for the following:

- to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (10-Day Notice),
- to be paid back for cost of emergency repairs,
- reduced rent for repairs, services or facilities agreed upon but not provided,
- for repairs to be made to the unit,
- to suspend or set conditions on the Landlord's right to enter,
- for the Landlord to comply with the Act and tenancy agreement,
- reimbursement of the filing fee.

The dispute was crossed with the Landlord's April 30, 2023 Application for Dispute Resolution for an Order of Possession, a Monetary Order for Unpaid Rent and reimbursement of the filing fee.

Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the Tenant indicated several matters of dispute on the application, the most urgent of which is the Notice to End Tenancy for Unpaid Rent and the consideration to withhold rent for emergency repairs. I dismiss the other claims with leave to reapply.

Both parties acknowledge service of the Notice of Dispute Resolution Proceeding and evidence submitted. Despite having enough time to prepare for the hearing, the parties asked to enter additional evidence during the scheduled hearing time. This request was denied to ensure procedural fairness, specifically the right for all parties to be informed of the case against them.

Issue(s) to be Decided

- Should the Landlord reimburse the Tenant for emergency repair costs?
- Does the 10-day Notice end the tenancy?

- Does the Tenant owe unpaid rent?
- Is the Landlord entitled to recover the filing fee?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

The fixed-term tenancy started on June 1, 2022 and converted to a periodic tenancy with an agreement of \$3900.00 monthly rent to be paid on the first day of each month. The Landlord holds in trust a \$3900.00 security deposit paid by the Tenant on May 16, 2023.

The Landlord reports unpaid rent in the amount of \$3900.00 for April 2023. The Landlord issued the 10-Day Notice to the Tenant on April 26, 2023, with the move out date of May 12, 2023. The 10-Day Notice indicates failure to pay rent in the amount of \$3900.00 due April 1, 2023. The Landlord reports additional unpaid rent for May and June 2023, calculating the total unpaid rent to \$11,700.00. The Landlord reports unpaid rent since April 2023 upon review of the company's accounting ledger.

The Tenant admits to unpaid rent for April 2023, stating they withheld the rent after paying for emergency repairs and to ensure the Landlord will engage in a conversation to discuss the Tenant's reasons for rent deduction. The Tenant indicates emergency repairs to a toilet in one of the three bathrooms in the rental unit. The Tenant says there is an uninstalled toilet that is creating a hazard for their child who may have access to the toilet.

The Tenant provided photographs of the washroom and other parts of the rental unit as well as cleaning and repair bills. The Tenant continued to occupy the rental unit with two other fully working washrooms with toilets.

The Tenant was paying rent with monthly cheques from June to December 2022, and as of January 2023 switched to e-transfer transactions. The Tenant reports full payment of rent for May and June 2023, with e-transfers completed on May 1, 2023 and May 31, 2023, in the amount of \$3,900.00 each. The Tenant did not provide any evidence to support these payments, stating the hearing was only to deal with failure to pay rent for April 2023, therefore, they did not submit evidence related to the subsequent months. The Notice of Dispute Resolution Proceeding confirms the Landlord is seeking unpaid rent for April and May 2023.

Analysis

- Should the Landlord reimburse the Tenant for emergency repair costs?

Emergency repairs are addressed in section 33 of the Act. A tenant cannot be reimbursed for emergency repairs unless the tenant has first demonstrated that repairs are:

- urgent,
- necessary for the health or safety of anyone or for the preservation or use of residential property, and
- made for the purpose of repairing
 - major leaks in pipes or the roof,
 - damaged or blocked water or sewer pipes or plumbing fixtures, or the primary heating system,
 - damaged or defective locks that give access to a rental unit, or
 - the electrical systems.

In addition, pursuant to section 33 of the Act, a tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- 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;
- following those attempts, the tenant has given the landlord reasonable time to make the repairs.

The Tenant did not substantiate the repairs to be of an emergency nature. The nature of the problem with the toilet was the fact that it was not installed and not that it was an urgent, or major leak necessary for the health or safety of the occupants. The Tenant still had two other working toilets in the unit. Consequently, the Tenant has failed to establish that they meet the criteria of emergency repairs as per section 33 of the Act and cannot be reimbursed for emergency repairs.

- Does the 10-day Notice end the tenancy?

As the Tenant stopped paying rent and did not demonstrate the emergency repairs were a lawful reason to withhold rent, I find the landlord had reason to give the 10-Day Notice and it has been properly completed as per section 52 of the Act.

I find the 10-Day Notice has ended the tenancy effective the date of May 12, 2023. The Landlord is entitled to an order of possession.

- Does the Tenant owe unpaid rent?

The Tenant reports paying rent by monthly cheques for a six-month period, at which time they switched to payment of rent by way of e-transfers. The Landlord reports no history of previously failed e-transfers transactions until April 2023, at which time they issued the 10-Day Notice. The Tenant admitted to \$3,900.00 unpaid rent for April 2023, however, claims to have paid for May and June 2023. The Tenant was aware of unpaid rent beyond April 2023 and did not provide proof of payment and based on the balance of probabilities, I find it more likely than not that the Tenant did not pay rent for May and June 2023. I find the Landlord is entitled to unpaid rent in the amount of \$11,700.00.

As per section 19 of the Act, the Landlord must not accept a security deposit that is greater than $\frac{1}{2}$ of one month's rent. Therefore, I am crediting the Tenant $\frac{1}{2}$ (\$1950.00) of the security deposit to the amount of unpaid rent.

The \$3,900.00 security deposit has accrued \$34.84 in interest, I order the Landlord to retain the security deposit of \$1984.84 ($\frac{1}{2}$ of \$3,900.00 + \$34.84) in partial satisfaction of the unpaid rent.

- Is the Landlord entitled to recover the filing fee?

As the Landlord was successful with their application, the Landlord is entitled to recover their \$100.00 filing fee from the Tenant.

- Is the Tenant entitled to recover the Filing Fee?

As the Tenant was not successful with their application, the Tenant is not entitled to recover their \$100.00 filing fee.

Conclusion

The Landlord is granted an order of possession effective two days after service. The Landlord should serve the order to the Tenant immediately. Should the Tenant fail to comply, the order may be enforced in the BC Supreme Court.

The Landlord is granted a monetary award of \$7,865.16.

Total Unpaid Rent	\$11,700.00
Minus $\frac{1}{2}$ of Security Deposit	\$1,950.00
Total Owing	\$9,750.00

Filing Fee	\$100.00
Total Owing	\$9,850.00
Minus ½ of overpaid Security Deposit + Interest	\$1,984.84
Total Monetary Award	\$7,865.16

The Landlord should serve the order to the Tenant immediately. Should the Tenant fail to pay, the order may be enforced in the Small Claims division of Provincial Court.

At the end of the tenancy the Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to deposits, damage and compensation, search the [RTB website](#) for information about after a tenancy ends.

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 26, 2023

Residential Tenancy Branch