



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #910104677: CNR, MNRT, MNDCT, FFT

File #910105295: OPR-DR, MNR-DR, FFL

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling the 10 Day Notice;
- a monetary order pursuant to ss. 33 and 67 to be repaid the cost of emergency repairs;
- a monetary order pursuant to s. 67 for compensation or other money owed; and
- return of the filing fee pursuant to s. 72.

The Landlord files its own application seeking the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing a 10 Day Notice to End Tenancy signed on March 14, 2023 (the “10 Day Notice”);
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of the filing fee pursuant to s. 72.

S.D. appeared as the Tenant. N.H. and B.J. appeared as the agents for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Preliminary Issue – End of the Tenancy

At the outset of the hearing, the parties confirmed that Landlord took back possession of the rental unit on April 1, 2023 after the Tenant had vacated.

Given that the tenancy is over, whether the 10 Day Notice is enforceable or not is irrelevant. As such, I dismiss the following claims without leave to reapply:

- The Landlord's claim under s. 55 of the *Act* for an order of possession; and
- The Tenant's claim under s. 46 of the *Act* to cancel the 10 Day Notice.

The hearing proceeded strictly on the respective monetary claim.

Issue to be Decided

- 1) Is the Tenant entitled to compensation for emergency repairs?
- 2) Is the Tenant entitled to other monetary compensation?
- 3) Is the Landlord entitled to an order for unpaid rent?
- 4) Is either party entitled to their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on June 1, 2022.
- The Tenant vacated the rental unit on April 1, 2023.
- Rent of \$1,650.00 was due on the first day of each month.
- The Tenant paid a security deposit of \$825.00 to the Landlord.

I am provided with a copy of the tenancy agreement by the parties.

1) *Is the Tenant entitled to compensation for emergency repairs?*

Pursuant to s. 33(5) of the Act, if a tenant undertakes emergency repairs, a landlord must reimburse the tenant for these expenses upon the tenant claiming them from the landlord by providing a written accounting of the repair costs.

Pursuant to s. 33(6) of the Act, s. 33(5) of the Act does not apply if the tenant fails to follow the process set out under s. 33(3) of the Act, which is to say that emergency repairs are not needed, the tenant has made at least two attempts to contact the landlord by phone, and the landlord has failed to undertake the repairs within a reasonable time of contacting the landlord.

Further, a tenant is not entitled to compensation under s. 33(5) of the Act where they have failed to provide a written accounting of the repairs to the landlord, the amount sought is more than a reasonable cost for the repairs, or the repairs were required due to the tenant's actions or neglect.

When a landlord does not reimburse a tenant as required under s. 33(5) of the Act, a tenant may deduct the amount claimed from rent or otherwise recover the amount through a monetary award.

The Tenant, in his application, claims \$140.00 to be repaid the cost of emergency repairs and describes the claim as follows:

-service technician came to inspect fridge. Was told via email it would be discounted off of rent. Has not to date.

At the hearing, the Tenant described issues with his refrigerator saying that he reported the same to his Landlord in July 2022 and that it took five months for the Landlord to repair the issue. The Tenant described the issue of the refrigerator freezing his food, which would require him to turn it off and on.

The Tenant says that he called a technician himself to undertake repairs, which cost him \$135.45. The Tenant's evidence includes an invoice for this amount dated December 7, 2022. The Tenant seeks reimbursement for this amount.

The issue with this portion of the Tenant's claim is that repairs to a refrigerator do not qualify as an emergency repair as set out in s. 33(1) of the *Act*. Emergency repairs are defined as follows under the *Act*:

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

Even if I accept that the refrigerator was non-functional for 5 months, it was never an emergency repair as the refrigerator repair does not meet the criteria set out above. The Tenant was not entitled to undertake the repair himself under s. 33(3) of the *Act*. As such, he cannot claim it as an emergency repair. This portion of the Tenant's claim is dismissed without leave to reapply.

I note that the Tenant's evidence includes emails to the effect that there was an agreement for the repair costs be deducted from rent in February 2023. However, the Tenant did not claim this amount as part of his general compensation claim. Instead, he pled it as an emergency repair, which as noted above it was not. Rule 2.2 of the Rules of Procedure limits a claim to what is stated in the application. The Tenant is limited to the claim in his application.

2) *Is the Tenant entitled to other monetary compensation?*

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.

3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Tenant's application claims \$1,500.00 for this portion of the claim and is described as follows:

-service call -parking fees -undue stress from sending unqualified service technicians

The Tenant argued that the Landlord failed to send qualified repair people to deal with the refrigerator, which I understand was ultimately replaced. As argued by the Tenant, he seeks an amount of compensation.

The Landlord's agents acknowledge that the refrigerator was in issue but says that the repair person they had sent was satisfied it was in working order. They do not deny the refrigerator was eventually replaced.

Policy Guideline #16 provides guidance on compensation claims and states the following which I find is relevant to this matter:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I accept that the Landlord failed to maintain and repair the refrigerator in contravention of its obligation to do so under s. 32(1) of the *Act*. I further accept that the issue persisted for some months, which was ultimately resolved when the refrigerator was replaced.

I find that the Tenant is entitled to a general nuisance claim. There is no indication that the refrigerator was non-functional for 5 months, only that it was not functioning

optimally and would freeze his food. Given the severity of the issue and the period involved, I find that the Tenant is entitled to \$500.00 in nominal damages.

The Tenant also seeks the return of parking fees paid during the tenancy. The Tenant explained that the advertisement for the rental unit said that parking was included in rent and that after he had signed the tenancy agreement, he signed a parking agreement whereby he was to pay \$50.00 per month for his parking stall.

The Landlord's agents deny that the rental unit was advertised as having parking included in rent.

I have a copy of the parking agreement, which was signed by the Tenant on May 31, 2022. In it, he agreed to pay \$50.00 for parking. I also note that the Tenant signed the tenancy agreement on May 16, 2022 and that parking fees are listed as N/A under clause 6.

The Tenant's evidence includes a screenshot of the building's amenities, listing gated underground parking. However, that does not mean the rental unit was advertised as \$1,650.00 inclusive of parking. Further, the tenancy agreement is silent on whether parking was included in rent and does not list that the Tenant had access to a parking stall at all. It was only after signing the parking agreement that the Tenant became entitled to a parking stall, which he agree to pay an additional \$50.00 per month to access.

I find that the Tenant has failed to demonstrate that the Landlord breached the *Act*, tenancy agreement, or Regulations giving rise to damages. This portion of the Tenant's claim is dismissed without leave to reapply.

Finally, the Tenant describes an issue with a \$100.00 deposit for a FOB giving access to the residential property. However, the Tenant also admits that he did not pay the deposit. The Tenant argued that the FOB deposit was improperly requested. I find that the issue of whether the FOB deposit was permitted is moot as the Tenant never paid it.

I find that the Tenant has established a total monetary claim under of \$500.00.

3) Is the Landlord entitled to an order for unpaid rent?

The Landlord's agents explained that the Tenant did not pay rent or the parking fee for March 2023. The Tenant acknowledges that he did not pay rent or the parking fee.

Under s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. As noted above, there were no emergency repairs such that s. 33(7) of the *Act* does not apply.

I find that the Landlord has established that the Tenant breached his obligation to pay rent in contravention with s. 26 of the *Act* and the tenancy agreement. I further find that the Landlord has established that the Tenant breached his obligation to pay the parking fee, which is in breach of the parking agreement. I accept that the Landlord suffered lost income that could not have been mitigated as the Tenant continued to occupy the rental unit.

The Landlord is entitled to \$1,700.00 in compensation.

4) Is either party entitled to their filing fee?

I find that the Tenant was largely unsuccessful such that he is not entitled to his filing fee. His claim under s. 72 of the *Act* is dismissed without leave to reapply.

I find that the Landlord was successful in its claim and is entitled to its filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee.

Conclusion

The Tenant has demonstrated an entitlement to \$500.00 in nominal damages.

The Landlord has demonstrated an entitlement to \$1,700.00 in unpaid rent.

I grant the Landlord its filing fee of \$100.00, which shall be paid by the Tenant.

Taking the amounts above into account and pursuant to ss. 67 and 72 of the *Act*, I order that the Tenant pay **\$1,300.00** to the Landlord (\$1,700.00 + \$100.00 - \$500.00).

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the order, it may be enforced by the Landlord at the BC Provincial 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: July 05, 2023

Residential Tenancy Branch