



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Tenant's application to cancel a 10-Day Notice to End Tenancy for Unpaid rent (Notice) issued by the Landlord on May 2, 2023. The Landlord applied for an order of possession and a monetary order for unpaid rent, as well as a request for reimbursement of the filing fee.

Issues to be Decided

1. Can the Tenant cancel the Notice to End Tenancy? If not, is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a monetary award?

Background and Evidence

The parties entered into a tenancy agreement on September 25, 2022 on a month-to-month basis. The agreement provided that rent was \$1,200.00 per month, due on the first of each month. For the first 6-month period, the Tenant was to pay \$800.00 per month and the differential was to be paid in a lump-sum on April 1, 2023. Additionally, the Tenant was to pay the full monthly rent of \$1,200.00 from April 1, 2023 onward. The Landlord required no security or pet deposits.

The parties agree that the Tenant had possession of the rental unit on September 25, 2022, but has made only one partial payment on April 29, 2023, in the amount of \$500.00.

The Landlord issued the Notice on May 2, 2023 with an effective date of May 12, 2023 for unpaid rent totaling \$9,600.00 as of May 1, 2023. A copy of the Notice was submitted into evidence. The Landlord's counsel requested that any order for unpaid rent include through July, pro-rated to the date provided for in an order of possession. As of the hearing, the Tenant remains in possession of the rental unit.

The Landlord attempted personal service of the Notice on the Tenant on May 2, 2023. An individual accompanied the Landlord to effect service. The individual's statement on the proof of service form indicates that the Tenant was seen inside the rental unit, the individual knocked but the Tenant would not respond. The Individual states that he informed the Tenant through the closed door why he and the Landlord were there, and that the Notice would be left on the doorstep, which it was fastened by tape. A copy of the proof of service form has been submitted into evidence.

The Tenant states she received the Notice on May 5, 2023. The Tenant's application for dispute resolution is dated May 10, 2023.

The Tenant contends that she paid \$350.00 in emergency plumbing repairs to the rental unit and that this sum should be credited against any rent owing. The Tenant provided text messages between her and a handyman for work on the plumbing issue (water leaking due to a faulty pipe connection) but no invoice or proof of payment was submitted and the Tenant testified she did not receive an invoice. The Tenant stated that the Landlord knew of the water issue in the rental unit. The Landlord's counsel notes that the Tenant failed to provide any notice to the Landlord that there was a plumbing emergency requiring repairs, and disputes the necessity of the repairs the Tenant procured.

Analysis

At the hearing the Tenant acknowledged that she had failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. While the Tenant has disputed the 10 Day Notice, little evidence was presented at the hearing as to why this rent remained unpaid. In accordance with section 46(5) of the Act, the Tenant's failure to pay rent has led to the end of this tenancy. No evidence was presented at the hearing

demonstrating that the Tenant had been granted an order from an arbitrator with the Residential Tenancy Branch that rent did not have to be paid. I find that the Landlord is entitled to an Order of Possession.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. As described in Policy Guideline 16 the claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the Landlord to prove their entitlement to a claim for a monetary award.

The Landlord has met his onus of proof and I find that the Landlord has sustained damage or loss in the amount of \$10,300.00 in unpaid rent for the period October 1, 2022 through June 30, 2023.

Is the Tenant Entitled to Deduct for Emergency Plumbing Repairs?

Section 33 of the Act addresses emergency repairs to rental units. Section 33(1) defines emergency repairs as those which are urgent, pose a risk of health and safety to occupants or to the property, and pertain to an essential structural components or systems of a rental unit. This includes plumbing fixtures.

In order to make needed emergency repairs, section 33(3) requires the tenant to make two attempts to contact the landlord's designated contact for emergency repairs, and following those attempts, allow the landlord a reasonable opportunity to make the repair. Section 33(4) allows a landlord an opportunity to take over repair work at any time.

Section 33(5) mandates a landlord to reimburse a tenant for the cost of emergency repairs when the tenant claims the amount from the landlord and presents the landlord with a written account of the emergency repairs together with receipts for the amount claimed.

The Tenant testified that there was water leaking in the rental unit that required repair. She provided text messages of communications she had with a handyman to make the

repairs and provided a photograph of water settling on the carpet in the laundry area. The Tenant stated that the Landlord had known of the water intrusion issues in the rental unit but did not substantiate the claim further.

The Landlord's counsel disputed that the water intrusion was sufficient to constitute an "emergency" under the Act and that the repairs were necessary. Counsel notes that the Landlord's contact information was readily available to the Tenant, but at no time did she contact him. The Landlord's counsel stated that the Landlord was not made aware of the repairs made by the Tenant until after service of the Notice. Finally, the Tenant did not provide any invoice or receipt for the repair amount claimed.

Even assuming the plumbing issue was an emergency that was urgent and required necessary repair to safeguard the health and safety of the Tenant or the rental unit itself, I find the Tenant failed to comply with the requirements of section 33(5) in order to obtain reimbursement from the Landlord.

Conclusion

The Tenant's application is dismissed without leave to reapply. I find the Tenant has failed to pay rent without justification under the Act and deny the Tenant's claim for reimbursement for emergency repairs. I find the Landlord is the successful party in this proceeding and award the Landlord reimbursement from the Tenant of the filing fee.

I grant the Landlord's application for an Order of Possession effective July 15, 2023 at 1:00 pm.

I grant the Landlord a Monetary Order in the amount of \$11,000.00 calculated as follows:

- unpaid rent in the amount of \$10,300.00, for the period October 1, 2022 through June 30, 2023;
- rent on a pro-rated basis of \$600.00 for July 2023 at one-half the monthly rental rate; and,
- reimbursement of the \$100.00 filing fee.

The Landlord is provided with Orders on the above terms. Should the Tenant fail to comply with the Orders, these Orders may be filed and enforced as Orders 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: July 12, 2023

Residential Tenancy Branch