

DECISION

Introduction

This hearing dealt with two Applications for Dispute Resolution by the Tenant.

The first Application for Dispute Resolution, filed on June 21, 2023 seeks the following:

- cancellation of the 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities, dated June 22, 2023
- an order requiring repairs to the unit

At the hearing, the Tenant told me that the first Application was never served on the Landlord. She stated that the second Application sought the same relief and that she had meant to withdraw the first Application. In light of this, I dismiss the relief sought in the first Application without leave to reapply.

The second Application for Dispute Resolution, filed on June 27, 2023, seeks the following:

- cancellation of the 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities, dated June 22, 2023 (the 10 Day Notice)
- an order to reduce rent for repairs, services or facilities agreed upon but not provided
- an order requiring repairs to the unit

The remainder of this decision concerns the second Application for Dispute Resolution only.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Landlord was served on July 3, 2023, by registered mail in accordance with section 89(c) of the Act. The Landlord's agent confirmed during the hearing that he received the Proceeding Package and that service of the Notice was not disputed.

Service of Evidence

Both the Tenant and the Landlord's agent acknowledged receiving each other's documentary evidence. No issues were raised by either party regarding the service of evidence.

Issue(s) to be Decided

1. Should the 10 Day Notice be cancelled?
2. Should an order be made to reduce rent for repairs, services or facilities agreed upon but not provided?
3. Should an order be made requiring the Landlord to make repairs to the unit?

Background and Evidence

The Landlord provided the following testimony:

- The tenancy started on February 15, 2023. The monthly rent is \$2,800 and the Landlord collected a \$2,800 pet damage and security deposit at the start of the Tenancy.
- The Tenant informed the Landlord about an issue with the gas furnace and hot water heater on June 14, 2023
- The Landlord considered the issue to be urgent
- The Landlord sent technicians over the following two weeks but they were repeatedly denied entry by the Tenant
- The Tenant finally allowed entry by a technician on July 6, 2023 and the necessary work on the furnace was completed. The Landlord submitted a certificate issued to them by Technical Safety BC
- The Tenant did not pay \$2,800 rent in June, citing the issue with the furnace as her reason to withhold rent
- The Tenant paid \$1,200 on July 20th but did not pay the balance of the rent for the month of July
- The Tenant paid \$900 on August 11, 2023 and \$1,900 on August 15, 2023
- As of the date of hearing, \$4,400 has not been paid by the Tenant (June rent plus \$1,600 of unpaid rent in July)

The Tenant provided the following testimony:

- She did not pay rent on time in June because of an issue with the receipt of her child tax benefit. She reached an agreement with the Landlord to pay June rent during the second week of June

- On June 14, she could smell rotten eggs in the rental unit and realized there was an issue with the furnace
- She called FortisBC and when they inspected the unit they confirmed that there was an issue with the furnace. FortisBC shut off the gas and told the Tenant that the carbon monoxide detector was not working properly. FortisBC also told the Tenant that she and her family were lucky to be alive and that calling when they did likely saved their lives
- It was at this point that she decided not to pay rent for June, given the serious safety issue at the rental unit
- The Landlord repeatedly sent uncertified technicians to conduct work on the furnace/hot water heater, which is why she denied entry. This is corroborated by an email from a Technical Safety BC safety officer that was submitted as evidence
- The furnace and hot water heater were ultimately repaired on July 6, 2023 by a certified technician
- She did not have heating or hot water between June 14 and July 6
- She did not have any expenses specifically related to the lack of heating or hot water (such as hotel room charges)
- neither her nor her kids could bathe in the rental unit and her kids developed rashes because they could not bathe during this period. This undermined the quality of life of her children who have special needs.
- She never paid rent in June and only paid \$1,200 in July because her and her family almost died and the repairs were not being addressed appropriately by the Landlord
- Rent for the month of June in addition to half of the rent owing for July should be waived because of the issue with the furnace/hot water heater

Neither the Landlord nor the Tenant disputed each other's testimony. When given an opportunity to comment on the Tenant's evidence, the Landlord said that it was "false" but also acknowledged that he had no evidence to prove his assertion.

Analysis

I accept the Tenant and the Landlord's evidence as true. Their evidence is entirely consistent. The only statement in the evidence that I do not accept is the Landlord's assertion that the Tenant's evidence was "false", given that he did not provide any specifics regarding this assertion.

Should the 10 Day Notice be cancelled?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

I accept the Landlord's evidence that the Tenant did not pay \$2,800 for June 2023 and had cause to issue a 10 day notice to end the tenancy. The landlord used form #RTB-

30 which is signed and dated by the Landlord, gives the address of the rental unit, and has an effective date. I find that the Tenant received the notice on June 26, 2023 and had until July 4, 2023 to cancel the notice by paying \$2,800.

The Tenant did not dispute that she did not pay rent in June and said that she had a good reason for not paying rent in light of the malfunctioning furnace.

The Act provides that rent can be deducted in the following circumstances:

- overpayment of the security deposit of the pet deposit by the tenant (section 19)
- payment by the tenant for emergency repairs after following the proper procedure (section 33)
- overpayment of rent by the tenant following an illegal rent increase (section 43)
- applying compensation that a tenant is entitled to after receiving a two or four month eviction notice (section 51);
- a tenant has an order from the Residential Tenancy Branch allowing them to withhold rent (section 65);

The Tenant did not pay for emergency repairs and none of the other circumstances apply. While this situation did constitute an emergency that would justify emergency repairs, the proper procedure laid out in section 33 of the Act was not followed, nor did the Tenant personally pay for any repairs.

In sum, the Act allows tenants to withhold rent in narrow and limited circumstances. While I have sympathy for the stressful and difficult experience that the Tenant and her family went through, the law does not allow tenants to unilaterally withhold or deduct rent where a tenant finds that the Landlord is not complying with the Act or is endangering their safety.

The tenant's application to dispute the notice is dismissed because the notice has been properly completed and tenant had no lawful reason to deduct any rent. The Landlord is entitled to an Order of Possession.

When an application to cancel a notice for unpaid rent is dismissed, the landlord is entitled to an order for the unpaid rent.

Should an order be made to reduce rent for repairs, services or facilities agreed upon but not provided?

The duration the gas appliance was turned off was directly related to the landlord's failure to comply with the health, safety and housing standards required by Technical Safety BC. The Tenant acted reasonably to minimize the damage by immediately contacting the gas company and the landlord.

In accordance with section 65, I award the tenant a rent reduction of \$300 which I believe is equivalent to the reduction in the value of a tenancy agreement from the lack of hot water for 16 days.

Should an order be made requiring the Landlord to make repairs to the unit?

As the tenancy is over, I dismiss this claim without leave to reapply.

Conclusion

The Order of Possession is **effective two (2) days after service on the Tenant**. Should the Tenant or anyone at the rental unit fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the tenant's pet damage and security deposits and grant a **\$1,269.48** Monetary Order for the unpaid rent. The Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply, it may be enforced in the Small Claims Division of the Provincial Court.

Unpaid rent	\$4,400.00
Less – Rent reduction	\$300
Less - Security deposit with interest	\$ 2,830.52
Total	\$ 1,269.48

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: September 6, 2023

Residential Tenancy Branch