



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNRT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling three 10 Day Notices to End Tenancy For Unpaid Rent or Utilities and for a monetary order for the cost of emergency repairs.

The hearing did not conclude in the time scheduled and I adjourned the hearing to continue; my Interim Decision was provided to the parties after the first scheduled date.

The tenant and a co-tenant and the landlord and a co-landlord attended the hearing on both scheduled dates, and the landlord was represented by an agent. The landlord's agent and both tenants gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

At the commencement of the first day of the hearing the parties agreed that all evidence had been exchanged. However, during the course of the hearing the tenant indicated that no Affidavits were provided to the tenants, and described in more detail what was received. The landlord's evidentiary material is broken into 2 parts.

Any evidence that a party wishes to rely on must be provided to the other party even if they already have a copy because it is important for all parties to know what is before me. The landlord was not able to prove that Part 2 of the landlord's evidence was given to the tenant, and I decline to consider it. All other evidence of the parties has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notices to End Tenancy For Unpaid Rent or Utilities were issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established a monetary claim as against the landlord for the cost of emergency repairs?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on February 1, 2022 and the tenants still reside in the rental unit. There is a written tenancy agreement, however the landlord has misplaced it. Rent in the amount of \$1,600.00 is payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$800.00 as well as a pet damage deposit in the amount of \$800.00, both of which are still held in trust by the landlord. The rental unit is a basement suite and the upper level is also rented.

The landlord's agent further testified that on January 19, 2024 the tenant was served with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice) by placing it on the door of the rental unit. A copy of the Notice has been provided for this hearing and it is dated January 19, 2024 and contains an effective date of vacancy of January 29, 24 for unpaid rent in the amount of \$1,600.00 that was due on December 1, 2023.

The landlord also issued another 10 Day Notice to End Tenancy For Unpaid Rent or Utilities and a copy has been provided for this hearing. It is dated January 19, 2024 and contains an effective date of vacancy of January 29, 2024 for unpaid rent in the amount of \$1,600.00 that was due on January 1, 2024.

Another 10 Day Notice to End Tenancy For Unpaid Rent or Utilities was served personally to the male tenant on February 2, 2024, which is effective February 12, 2024.

The tenants are in arrears of rent the sum of \$4,800.00 for December, 2023 and January and February, 2024. No rent has been paid to the landlord since the Notices were served.

The landlord disagrees with the tenant's claim for the cost of emergency repairs. On November 20, 2023 the tenant sent a text message to the co-landlord about a sewer back-up and overflowing of the toilet. Immediately the co-landlord called a septic tank company and a plumber. A general handy-man went to the rental unit to help with damage control, who confirmed a clogged pipe and tried to get a plumber, but was not successful and it had to wait until the next day. The landlord was not in town.

The general handy-man noticed a large brick was placed on top, covering the drain in the laundry room. The tenant's spouse tried to snake it but didn't realize that the laundry room is lower than the rental suite, and removed the laundry room plug. The brick was there because the tenant couldn't put the plug back in. Drain traps are in the

toilet and tub to prevent smell in the home. The tenant attempted a repair without notifying the landlord.

A plumber came in for 2 days in a row, and their findings are provided for this hearing. The plumber found plugged toilet paper and feminine products on November 22 and 23, 2023. The toilet was removed twice.

The tenants opened a drain that ought not to have been removed, and they couldn't put it back in. It could have been repaired if the tenant had not tried to snake it and remove the plug in the laundry room.

There is evidence provided by the tenant that the wastage was all over walls, floors and spread to bedrooms, all over the floors outside the bathroom and laundry, but no photographs so the landlord doesn't know what was replaced. There are no receipts or lists of what was re-built or repaired. The tenants had flooring replaced, painted, added some plumbing pieces under the sink, amounting to renovations and repairs without the landlord's knowledge. The tenants have also made other modifications that have not been authorized by the landlord.

The tenant (KSJ) testified that a previous hearing was held on December 28, 2023 and provided a file number.

I advised the parties that I would be reviewing the Decision to ensure that I don't make any findings of fact or rulings that have already been adjudicated upon. In that case, the tenants had disputed a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated November 20, 2023 for unpaid rent in the amount of \$1,600.00 that was due on November 1, 2023, and for monetary compensation. The landlord had also applied for an order of possession and a monetary order for unpaid rent, and the applications were joined to be heard together. The Arbitrator cancelled the Notice, finding that the landlord failed to prove that rent for November had not been paid when the tenant testified that it was paid in cash and the landlord did not issue receipts. The resulting Decision also orders the landlord to give receipts for all money received in cash, and the landlord's application for a monetary order for unpaid rent was dismissed without leave to reapply.

The tenant further testified that the tenants paid for all of the items required to fix the rental home and spent a lot of time doing so. The tenant did not pay the rent, and talked to an Information Officer at the Residential Tenancy Branch who said it was for emergency repairs.

The tenants paid for flooring, paint, cleaners, chemicals and the floor was covered in feces in the laundry room, seeping into the bathroom, furnace room and main bedroom. The tenants also paid for drywall, calking and mud. The toilet did not flood.

Receipts had been removed off the tenant's table in January, 2024 when the landlord came in. That was the first time the landlord came in to inspect, and didn't inspect at all, just came in yelling.

The tenants asked the landlord to make the repairs numerous times, starting on November 18, as well as the 19th and 20th. The tenants asked for help for 5 days, and people came to clean up the feces, but they only picked up clothing, placed it in a plastic bag and put it in the back yard. They didn't clean anything.

The tenants claim \$7,650.00 for the cost of emergency repairs, as follows:

- 55 hours at \$45.00 per hour for cleaning raw sewage off the floor, tearing out drywall for 2 feet up the wall, flooring and baseboards, and bleach;
- 47 hours at \$45.00 per hour for replacing frame wallboards and drywall, mudding;
- for a total of 102 hours at \$45.00 per hour = \$4,590, and
- \$700.00 for 2 dehumidifiers and a shop heater purchased on-line.

The co-Tenant (MC) testified that prior to the first back-up the landlord showed up drunk asking why the tenant was working on a car. He swore at the tenant's wife and said that the tenants hadn't paid rent. The tenant told him to leave. The tenant called police who showed up just after the landlord left, and the co-Landlord was crying. Police said that if the landlord returned the tenants should call police again. The landlord came back in about 10 minutes and was arrested. Two days later the sewer backed up.

The co-Tenant called the co-Landlord and got no response. A couple of days later the tenants received a response saying that the co-Landlord didn't care; that it was her husband's problem.

On November 20, 2023 they sent tank services out to drain the tank. Several messages had been sent to the landlord with no response. The place was getting destroyed and the tenants had to send their son away due to the mess. Photographs have also been provided for this hearing. Finally, the co-Landlord said she'd send someone to clean and a plumber. They were just supposed to drain the tank. The lid of the septic tank was under dirt and obviously full. The landlord says that the tenants plugged it, but the backup was so bad, from the main line to the house, it had pushed all

that gross smelly stuff so far and it was allowed to sit there. The landlord ignored the tenant's problem.

A plumber took a snake and managed to get water to get through, but nothing pushed out; it was just a hole in it. As time went on, about 2 months, and another backup occurred. The landlord says a plumber pulled out personal hygiene materials and paper, but nothing pulled out of anywhere. When the clog was free, the angle pipe looked like it was draining, but it was not going anywhere. For 3 weeks prior, the tenants told the landlord that it had to be drained. The landlord left it for too long.

A tank service technician came to check it and asked if a service line from the house to the septic had been checked, and the tenant confirmed that no one did. He dug a hole and found a brick. There was hardened feces at the end. It was not plugged at the pipe, and was only pushing holes and then it would drain.

The tenant does not deny that rent wasn't paid, testifying that it was disgusting. When the landlord came in, he just wanted to argue, not fix anything. After the landlord left, papers were missing off the table.

The tenants paid for drywall, flooring, beds, mud, tape, paint, bio cleaner stuff, 2 humidifiers and a heater, and had to clean and dry out, then clean again and paint.

The tenant doesn't know what happened to the receipts from Rona and Home Depot, but testified that the tenants paid just under \$2,000.00 for materials, as well as the tenants' time.

The tenant also disputes that the laundry is lower than the bathroom; they are exactly the same.

The tenants were always trying to work with the landlord, who appreciated work that the tenant has done, and now it's all bad. The landlord also said that the tenants didn't pay a security deposit or a pet damage deposit or pay rent for November, 2023 at the previous hearing. The tenants proved that they paid.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlords recognize there was concern of the septic and have provided all of the evidence. Police were there, and the landlords did their best to be good landlords. There was an Immediate response by both landlords to provide service when this happened. In February, 2024 a septic call concern was called and the same tank service was asked to go to the rental unit, and a plumber. That is in evidence provided February 9, 2024. In February, 2023 it was followed up on promptly, inspections and clean up and certification

were given to the landlord by the tank service company, due to blocked and debris. The invoices clearly state there was a blockage.

Damage and the compensation claimed could have been avoided if the laundry drain had not been plugged. On 2 occasions services were completed by a plumber in November and again in February, 2023. Each time it was due to a clog. Septic repair was done every 2 years and covered by warranty by a company who has serviced it for the last 15 years. In February, 2024 it was paper.

The tenant testified that on November 13 police came to the property, and until January there was no attendance by the landlord for any reason except an inspection on February 1 with the other landlord and 2 police officers. No tenants resided upstairs for a month before. New tenants moved in on November 20, 2023. If there was a concern about the damage, the landlords' insurance would have covered the landlords and the tenants. The landlords feel that the tenants were negligent, but have provided no receipts and to claim falsely that someone stole the receipts, is so they don't have to pay rent. No rent has been received for December, 2023 or January or February, 2024. There were no issues prior to that.

SUBMISSIONS OF THE TENANTS:

They were not same tank people, but different guys. It was full of "crap," which carries on. Feminine products aren't used by the tenants. The landlord had been at the rental unit for an inspection and chose not to help. Everything became a problem after that. The landlord was there in February and he said he'd remove stuff from the tenants' shed, and the tenant called 911. Only 1 plumber came out, a lot of text messages have been provided showing dates and times.

Police arrived every day since the last Arbitration hearing. The tenant told police he could come in because the landlord had alleged stolen property. The landlord told the police that he is higher than the tenant and police, and can do what he wants. The landlord kept trying to get police to arrest the tenants. An officer came in and the tenant showed him what the tenants were are going through.

Analysis

The *Residential Tenancy Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. The *Act* also states that a tenant must pay rent even if the landlord fails to comply with the law.

The *Act* also states that a tenant may deduct the cost of emergency repairs from rent owed to the landlord. However, *Act* also describes what are considered emergency repairs:

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

In this case, the tenants claim emergency repairs for damaged or blocked water or sewer pipes or plumbing fixtures, which I find qualifies as emergency repairs.

The *Act* also states that:

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

There is no evidence in this case that the landlords have done so, however the tenants contacted the landlord on November 20, 2023 about the deluge of sewage in the rental unit.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;

(b) 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;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The tenants have not provided any receipts for this hearing or to the landlord, testifying that the landlord took all the papers off the table when the landlord attended for an inspection. That testimony is disputed by the landlord.

The tenants' claim is \$7,650.00, however the evidence shows a claim of \$4,590.00 and \$700.00 for the dehumidifiers and shop heater, for a total of \$5,290.00. Rent is \$1,600.00 per month and the tenants have withheld 3 months rent, totaling \$4,800.00. In order to cancel the 10 Day Notices to End Tenancy For Unpaid Rent or Utilities I would have to make a finding that the tenants expended at least \$4,800.00 for emergency repairs, and that the tenants made at least 2 attempts to phone the landlord

prior to starting the emergency repairs. I would also have to find that the tenant gave the landlord a written account of the costs and what was done. In the event that I find that the tenants made the repairs before giving the landlord a written account, or did not provide the account and receipts, or the amounts represent more than a reasonable cost, or the emergency repairs are for damage caused by the tenant, I must dismiss the tenants' application.

The tenants' evidence also indicates that the tenants claim \$500.00 for emotional damage, but that is not an emergency repair, and I decline to consider it. It also includes a request of \$6,000.00 for "fixing the place, \$650.00 for sending the tenants' son elsewhere to stay; \$500.00 for 3 loads of stuff by the washer; \$480.00 for lost clothing and compensation in the amount of \$1,600.00, for a total of \$9,730.00. Considering all of the evidence, I am not clear what exactly the tenants claim from the landlords. I have reviewed all of the text messages, very few of which are dated. The landlord's agent testified that the tenants added new flooring, paint, plumbing pieces under the sink, and that repairs were done without the landlords' knowledge.

I accept the undisputed testimony of the tenant that the tenants do not use feminine hygiene products, and therefore, I am not satisfied that the tenants caused the event through negligence. One of the tenants also testified that on November 13, 2023 the landlord was at the rental home, and 2 days later the sewer backed up. A couple days later the tenants received a response from one of the landlords indicating that the landlord didn't care and it was her husband's problem. It was on November 20, 2023 that the landlord sent tank services to drain the tank. The tenant (MC) testified that several messages were sent to the landlord with no response.

In the evidence before me, I find that an emergency existed but I am not satisfied that the tenants have established that the tenants are entitled to recover the cost of emergency repairs in excess of the amount of the unpaid rent. I find that the tenants' claim is for generalized, not itemized accounts.

There is no question that the damage or loss exists for the tenants, which I find has been established in the amount of 1 month's rent as compensation. Therefore, the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated January 19, 2024 for unpaid rent for the month of December, 2023 is hereby cancelled.

Rent for January, 2024 has also not been paid. I have reviewed the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities for January's rent and I find that it is in the approved form and contains information required by the *Act*. Therefore, I dismiss the tenants' application to cancel it, or the Notice to end the tenancy for February's rent.

The law states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an order of possession in favour of the landlords effective on 2 days notice to the tenants. The tenants must be served with the order of possession which may be filed in the Supreme Court of British Columbia for enforcement.

The law also states that if the Notice refers to unpaid rent, I must grant a monetary order in favour of the landlord for the unpaid rent. Having found that the tenants did not have any legal right to withhold rent for January or February, 2024, I grant a monetary order in favour of the landlords in the amount of \$3,200.00. The tenants must be served with the order which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated January 19, 2024 for unpaid rent for the month of December, 2023 is hereby cancelled.

The 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated January 19, 2024 for unpaid rent for the month of January, 2024 is not cancelled.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenant.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,200.00.

This order is final and binding and may be enforced.

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: March 05, 2024

Residential Tenancy Branch