Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

The Tenant filed an Application for Dispute Resolution ("Application A") on May 2, 2024 seeking:

- cancellation of a 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice") indicated served to them on April 3, 2024
- dispute of a rent increase
- reduction in rent for repairs/services/facilities agreed to but not provided
- repairs in the rental unit after contact to the Landlord with no completion
- suspend/set conditions on the Landlord's right to enter the rental unit
- recovery of the Application filing fee.

The Tenant amended their Application on June 4 to add an issue of emergency repairs for health/safety reasons. They also updated information regarding a subsequent 10-Day Notice served on June 6, 2024.

On June 8, 2024 the Tenant filed another Application ("Application B") to dispute the 10-Day Notice served on June 6, 2024.

On June 5, the Tenant filed another Application ("Application C") seeking:

- cancellation of the 10-Day Notice served on June 2, 2024
- dispute of a rent increase for capital expenditures
- the Landlord's compliance with the legislation/tenancy agreement
- recovery of the Application filing fee.

Preliminary Matter – repeat applications

The Tenant made a repeat application, Application B, on June 8, 2024. Presumably this was to address a second 10-Day Notice that the Landlord served in early June. I have

incorporated the second 10-Day Notice that the Landlord served in June as an amendment to the Tenant's initial May 2, 2024 Application A. With this, I dismiss the Tenant's Application B in its entirety, without leave to reapply.

On Application A, the Tenant indicated their dispute of a rent increase. On Application C, they provided this was an additional rent increase because of the Landlord's capital expenditures. For ease of organization in this matter, I have considered the issue from Application A, and withdrew the issue of rent increase via capital expenditures by amending the Tenant's Application C. This amendment by an arbitrator is authorized by s. 64(3)(c) of the *Act*.

Preliminary Matter – emergency repairs

The Tenant amended Application A on June 4, 2024. They added the issue of *emergency repairs* on page 3 of that amendment document. The Tenant did not provide details on what emergency repairs are necessary.

The *Act* s. 33 refers to very specific matters that are considered to be emergency repairs. The Tenant referred to none of these items in the hearing or on the amendment form.

For this reason, I withdraw this issue by amending the Tenant's Application. This amendment by an arbitrator is authorized by s. 64(3)(c) of the *Act*.

Service of Notice of Dispute Resolution Proceeding to the Landlord

In the hearing, the Landlord confirmed they received the Notice of Dispute Resolution Proceeding on Application A. The Tenant provided proof of delivery to the Landlord via registered mail. On this basis, I find the Tenant duly served the Landlord with the notice of their Application as required.

For the Tenant's Application C, the Tenant provided proof that they used registered mail to serve it to the Landlord, sent on June 13. The tracking information verifies the delivery as completed on June 17, 2024. On this basis, I find the Tenant completed service to the Landlord via registered mail as required. Though the Landlord stated they were not aware of this third Application C from the Tenant, with reference to the file number, I find the Tenant served the Landlord as required. The issues receive my consideration herein.

Service of evidence

The Landlord listed particular items of evidence they stated they received from the Tenant, in line with Application A. The Landlord, on my direct question, confirmed they did not receive evidence in the form of pictures of required repairs. For this reason, I exclude these pieces of evidence from the Tenant's evidence.

I find on a balance of probabilities that the Tenant also served evidence for their Application C to the Landlord as required.

Although they raised objections to the manner in which the Landlord served evidence to the Tenant in person on June 17, I find the Tenant confirmed they received evidence from the Landlord in full. I give the Landlord's evidence full consideration where relevant and necessary to do so.

Issues to be Decided

A. Did the Landlord increase the rent above the amount allowed by law?
B. Is the 10-Day Notice valid? If valid, is the Landlord entitled to an Order of Possession?
C. Is the Landlord obligated to complete repairs?
D. Is the Tenant entitled to a reduction in rent for repairs/services/facilities agreed to but not provided by the Landlord?
E. Is the Landlord subject to suspended/set conditions on their right to enter the rental unit?
F. Is the Landlord obligated to comply with the Act/tenancy agreement?
G. Is the Tenant eligible for recovery of the Application filing fee?

Background and Evidence

The Tenant and the Landlord each provided a copy of the tenancy agreement they have in place. The tenancy started on November 18, 2021, set to end on a fixed term on

November 17, 2023. The agreement does not indicate whether the tenancy would continue on a month-to-month basis, or end at that time.

The tenancy agreement set the rent amount at $3,750 as the monthly rent.

The agreement includes an addendum, showing the parties signed that document at the same time as the tenancy agreement. The Tenant stated they were unable to refer to the addendum specifically in the past because the Landlord did not provide a copy of that document. Not until the Tenant challenged a previous eviction notice in 2024 did they receive a copy of that document as evidence.

The addendum sets out "1st of each month $3,750 owing for rent." The addendum specifies the Tenant shall provide post-dated cheques. The addendum also makes a provision for the Tenant's payment of utilities, on the basis of the Landlord messaging to the Tenant about the "garbage/water/sewage bill quarterly issued".

A. Did the Landlord increase the rent above the amount allowed by law?

The Tenant raised this issue on their Application A and Application C by stating that they fell behind in rent payments as the tenancy progressed. What initially was a payment plan put in place by the Landlord became, from the Tenant's perspective, a rent increase. The Tenant provided a record of their payment schedule for each successive month March through to December, though no year on this record was indicated. The Tenant's submission contains their writing to explain discrepancies all over this document, in particular: "[the Landlord] has never given us a proper rental increase and we signed nothing" – this for the timeframe when the monthly rent amounts because $6,000 which the Tenant also noted was "over provincial rent increase allowed."

The particular document the Tenant refers to has the Landlord's statement: "If these amounts are met then you will be all caught up including the pet deposit that was finally paid towards your rent from over 2 years ago."

By the Tenant's calculation, they overpaid on rent in the amount of $12,061. To the Tenant, this equates to a rent increase from the Landlord from September 2023 onward.

The Landlord provided records in the form of their emails to/from the Tenant inquiring on rent payments, starting from December 2021 when the Tenant inquired on installments for that December 2021 rent payment. Miscellaneous pieces of

correspondence refer to different balances and installments by the Tenant. By August 2022 there are disagreements on payment amounts and installments.

By March 2022 the Tenant was writing to the Landlord about "hard dates and amounts to get us back in order."

For the hearing, the Landlord provided a worksheet on rent amounts paid, dates of payments, the method of payment, and the outstanding balance. This is from November 2021 through to June 2024, in preparation for this hearing. The monthly rent amount remained $3,750 for each successive month throughout this ledger.

B. Is the 10-Day Notice valid? If valid, is the Landlord entitled to an Order of Possession?

The Landlord served a previous 10-Day Notice to the Tenant on May 3, 2024. In a separate dispute resolution process, the Arbitrator cancelled the 10-Day Notice because of missing information required by the *Act*. They referenced the Landlord "not enforcing payment of rent in full for a substantial amount of time" as well as the Tenant's payment of partial rent in cash, and not knowing the amount of rent in arrears.

For this present Application, the copy of the 10-Day Notice that the Landlord signed on June 2, 2024 set the end-of-tenancy date for July 2, 2024. On this particular document, as appears in the Tenant's evidence, there is no provided address for the rental unit on page 1.

The Landlord issued a second 10-Day Notice on June 6, 2024. This set the end-of-tenancy date for July 6, 2024. The second page of the document lists the Tenant's failure to pay rent for $8,569.76 due on June 2, 2024. The Landlord also listed an amount for utilities owing at $382.55, following their written warning to the Tenant on September 9, 2023.

The Tenant's copy in the evidence bears the Tenant's notation setting out their observation of differing dates (*i.e.*, between the two served 10-Day Notice documents), and also questioning the Landlord's indicated method of service of this document.

The Landlord provided a worksheet for rent amounts owing. As of June 2024, this shows the total amount of rent owing at $9,710, with each of April, May, and June 2024 being unpaid. The Landlord in the hearing stated that this ledger was prepared after they served the June 6, 2024 10-Day Notice to the Tenant.

In the hearing, the Tenant confirmed that they did not pay rent for May and June because of their overpayment of rent in the past. The Tenant stated they paid $4,000 on April 1; the Landlord noted this payment was actually on March 28.

The Tenant reiterated that, as of the date of the hearing, they don't owe any amount of rent to the Landlord. By their calculation, they already overpaid by $800 even into July 2024.

The Landlord also prepared a worksheet showing unpaid utilities amounts. In contrast to the amount of $382.55 on the June 6 10-Day Notice, the worksheet brings the amount owing to $1,631.90 for the municipality-run local utilities.

C. *Is the Landlord obligated to complete repairs?*

The Tenant listed a repair for dishwasher, kitchen faucet, refrigerator, tub faucet, and the central vacuum in place in the rental unit. The Tenant provided photos of some aspects of these items; however, the Landlord stated they did not receive those particular pieces of evidence.

The Landlord provided evidence of purchases and pending repairs for these items. The only items outstanding, as of the hearing date, were the dishwasher, for which the Tenant stated they had a visit scheduled for June 29, and the central vacuum, which the Tenant stated was being addressed with a technician visit the week of the hearing. The Landlord submits these items were all completed, in light of the Tenant's Application for these specific repairs.

On their Application A, the Tenant briefly set out their experience with pests in the rental unit. They noted the pest control technician visit approximately 6 months after they notified the Landlord (through various means) of the issue.

In brief response to this in the hearing, the Landlord pointed to the pest control visit in the week prior to the hearing. The Landlord provided their record of correspondence on the issue of pest control, showing their attention to the matter through 2023. The Landlord paid $1,076.25 to pest control service provider on September 22, 2023.

D. *Is the Tenant entitled to a reduction in rent for repairs/services/facilities agreed to but not provided by the Landlord?*

On the Tenant's Application A, they specified the amount of $22,500, and listed a rodent infestation for 1.5 years prior, and issues of repair. They pointed to a "money trail on overpayment of rent" as evidence under this particular issue. In the hearing, the Tenant

described the Landlord having pest control visit/assess/action, with the issue finally being resolved after three months.

In response to what they heard on this piece of the Tenant's description in the hearing, the Landlord cited the Tenant's agreement-specified obligation to maintain the yard. From the Landlord's perspective this contributed to, or caused the ongoing pest problem.

E. Is the Landlord subject to suspended/set conditions on their right to enter the rental unit?

On their Application, the Tenant set out that the Landlord listed various issues, and specified that the Landlord visited when the washing machine was previously replaced. In the hearing, the Tenant stated they did not really understand this singular point on the Application form. They stated they were not raising the issue of the Landlord's right to enter the rental unit.

F. Is the Landlord obligated to comply with the Act/tenancy agreement?

The Tenant listed this on Application C, in reference to the Landlord not providing receipts for rent amounts they paid in cash.

In the interim period after the Tenant's applications for this hearing, the Landlord completed a complete financial audit for this tenancy. For any amount of rent that the Tenant paid in cash, the Landlord provided a receipt. This is shown in the Landlord's evidence, along with a record of their service to the Tenant of these receipts on June 18. This totals 5 receipts, according to the Landlord's ledger record.

G. Is the Tenant eligible for recovery of the Application filing fee?

The Tenant paid the $100 filing fee for Application A on May 2, 2024.

The Tenant paid no Application filing fee for Application B.

The Tenant paid the $100 filing fee for Application C on June 5, 2024.

Analysis

A. Did the Landlord increase the rent above the amount allowed by law?

The *Act* Part 3 sets out the timing and notice requirements for rent in creases. First, s. 41 sets out that "A landlord must not increase rent except in accordance with this Part." Following this, s. 41 provides more specifics:

> (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
>
> (3) A notice of a rent increase must be in the approved form.

To provide for the amount, s. 43 sets out:

> (1) A landlord may impose a rent increase only up to the amount
>
> (a) calculated in accordance with the regulations,
>
> (b) ordered by the director on an application under subsection (3)
>
> (c) agreed to by the tenant in writing.

The Tenant did not prove, on a balance of probabilities, that the Landlord increased the rent unilaterally, in an improper method, or in an amount that contravenes the strict limits put in place via the *Act*. The possibility of the Tenant *overpaying* on rent amounts owed does not constitute an illegal rent increase by the Landlord. The Tenant did not point to any specific piece of correspondence, or recall any other statements by the Landlord, wherein the Landlord stated explicitly that the rent was effectively raised.

I find what is in place, as of the date of the Tenant's Application, is a history of the Landlord and Tenant earlier agreeing to a payment plan when the Tenant's instalments and regular monthly payment of rent fell behind. At the point the Tenant felt they were overpaying on amounts owing, they referred to this instead as a form of rent increase that ran counter to the legislation. I conclude the Tenant did not raise the issue as such prior to the Landlord seeking to end the tenancy via the end-of-tenancy notices;

therefore, this greatly decreases the likelihood that the Landlord increased the rent, either directly or indirectly.

I dismiss this piece concerning rent increase of the Tenant's Application A and Application C, without leave to reapply. Because I am dismissing this issue of rent increase, I decline to rectify the monetary amount as compensation to the Tenant from a rent increase issue.

B. Is the 10-Day Notice valid? If valid, is the Landlord entitled to an Order of Possession?

The *Act* s. 52 provides the criteria for an effective written end-of-tenancy notice. As per s. 52(b), a notice to end tenancy must give the address of the rental unit.

In the hearing, the Landlord conceded that the 10-Day Notice they issued on June 2, 2024 was invalid, owing to the rental unit address not provided. I order this June 2, 2024 10-Day Notice is cancelled and of no force or effect.

The *Act* s. 26(1) sets out:

> A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

A rent reduction of any kind may only be ordered by an arbitrator, as set out in the *Act* s. 65. In particular, s. 65(1)(c) authorizes an arbitrator's order for repayment of any money paid by a tenant to a landlord, or deducted from rent.

In this tenancy, the Landlord served the 10-Day Notice to the Tenant on June 6, 2024. I find the Tenant amended their Application, and alternately filed Application B within the required timeframe.

I find as fact that the Tenant was not paying rent amounts as of May and June 2024. In the Tenant's mind, they overpaid for rent for a protracted period in the past. This does not constitute authorization to withhold rent of any amount. By s. 26, the Tenant did *not* have a right under the *Act* to deduct any part of the monthly rent.

I find that the Tenant did not pay rent when it was due, thereby violating s. 26 of the *Act*. The Landlord correctly issued a 10-Day Notice for this reason. I find the Tenant substantiated the Landlord's claim that rent was unpaid for at least two consecutive months in 2024, namely May and June.

For this reason, I find the June 6, 2024 10-Day Notice is valid. I find the Tenant confirmed their non-payment of rent for the tenancy agreement they had in place for this rental unit. I dismiss the Tenant's amended Application A, or alternately their Application B, or Application C, for this reason.

Under s. 55 of the *Act*, when a tenant's application to cancel an end-of-tenancy notice is dismissed and I am satisfied that the document complies with the requirements under s. 52 regarding form and content, I must grant a landlord an order of possession.

Here, I find the June 6, 2024 10-Day Notice complies with the requirements of form and content; therefore, I grant the Order of Possession to the Landlord.

While the *Act* s. 55(1.1) prescribes, in these circumstances, a monetary order to the Landlord for unpaid rent, I decline to do so. I find the Landlord's evidence undermines the amount they provided on page 2 of the June 6, 2024 10-Day Notice. I find the burden of proof for this amount is on the Landlord, and the Landlord's own amounts are conflicting. The Landlord must file a separate Application particular to rent amounts owing.

Similarly, I grant no amount to the Landlord for unpaid utilities amounts. The utilities amount provided by the Landlord varies between the 10-Day Notice and their post-end-of-tenancy notice audit. The burden of proof in this instance is on the Landlord, and the Landlord for this hearing did not apply for compensation. Also, there is no provision in the Act covering a default granting of unpaid utilities to a landlord; therefore, the Landlord must recover utilities amounts owing in a separate application.

C. Is the Landlord obligated to complete repairs?

The *Act* s. 32 sets out a landlord's obligation to maintain a residential property.

I am satisfied, from the parties' submissions and confirmation in the hearing, that the Landlord provided repairs and/or replacement of items for appliances and plumbing as required. I consider these matters settled.

I find the Landlord addressed the situation with the pest problem that the Tenant described. This is a matter of maintenance as per the *Act* s. 32. The Tenant did not

present sufficient evidence to show the pest control problem continues unaddressed or unacknowledged by the Landlord.

For the reasons above, I dismiss the Tenant's Application for repairs in the rental unit, without leave to reapply.

D. Is the Tenant entitled to a reduction in rent for repairs/services/facilities agreed to but not provided by the Landlord?

On my review of the evidence, the Tenant's Application, and their statements in the hearing, I find the Tenant is focusing on the issue of what they presented as an overpayment of rent in this tenancy. They obliquely referred to the pest control issue when making their indication on the Application; however, the substance of their submissions focused on the frequency, amounts, and means of payment of rent amounts from the Landlord, from December 2021 onward.

I find the Tenant's key issue here is focused on rent payments. This is not a matter of repairs/services/facilities withheld by the Landlord such that the value of the tenancy had decreased. For this reason, I dismiss this issue without leave to reapply. I addressed the issue of repairs above, finding that the Landlord completed repair and maintenance issues.

E. Is the Landlord subject to suspended/set conditions on their right to enter the rental unit?

In the hearing the Tenant specified that this was not an issue. I dismiss this issue from the Tenant's Application for this reason, without leave to reapply.

F. Is the Landlord obligated to comply with the Act/tenancy agreement?

The *Act* s. 26 strictly governs payment and non-payment of rent. Specifically, s. 26(2) specifies that a landlord must provide a tenant with a receipt for rent paid in cash.

I find as fact that by the time of the scheduled hearing, the Landlord provided receipts for what they have on record as the Tenant's payments of rent in cash. Going forward, the Landlord is positively obligated as per the *Act* to provide receipts going forward.

On this specific issue, I dismiss the Tenant's Application because the Landlord complied. I dismiss this, albeit with leave to reapply so the Tenant is thus able to apply on other issues regarding the Landlord's compliance in the future.

G. Is the Tenant eligible for recovery of the Application filing fee?

The Tenant was not successful on either Application A or Application C. For this reason, I grant no compensation for either filing fee they paid.

Conclusion

I grant a cancellation of the June 2, 2024 10-Day Notice for the reasons outlined above. In effect, the Landlord withdrew this 10-Day Notice from the record and declared it invalid.

In line with the June 6, 2024 10-Day Notice, I grant an Order of Possession to the Landlord **effective by 1:00 PM on July 31, 2024** after the Landlord serves this Order on the Tenant. Should the Tenant or anyone on the premises fail to comply with this Order of Possession, the Landlord may file this Order of Possession with the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

I decline to grant the Landlord compensation under the *Act* s. 55(1.1), as set out above.

As set out above, I dismiss the Tenant's other issues on Application A, Application B, and Application C, without leave to reapply.

I dismiss the Tenant's claim for recovery of the Application filing fee for Application A and Application C.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 28, 2024

Residential Tenancy Branch