



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, PSF, LRE, OPU, MNRL-S, MNDL-S, FFL

Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the to provide services or facilities, and for an Order restricting or setting conditions on the Landlord's right to enter the rental unit.

TB stated that the Tenant did not serve the Landlord with any documents regarding the Tenant's Application for Dispute Resolution, although the Residential Tenancy Branch provided the Landlord with a "courtesy copy".

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, for a Monetary Order for unpaid rent or utilities, doe Monetary Order for damage to the rental unit, and to recover the fee for filing an Application for Dispute Resolution.

TB stated that on July 18, 2024 the Landlord's Dispute Resolution Package was posted on the door of the rental unit. The Landlord had authority from the Residential Tenancy Branch to serve hearing documents by posting them on the door of the rental unit. I therefore find these documents are served in accordance with section 89 of the Act and the evidence was accepted as evidence for these proceedings. As these documents were properly served to the Tenant, the hearing proceeded in the absence of the Tenant.

On July 17, 2024 and July 26, 2024, the Landlord submitted evidence to the Residential Tenancy Branch. KB stated that on July 27, 2024, this evidence was posted on the door of the rental unit. I find this evidence was served in accordance with section 88 of the Act, and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

On the basis of TB's testimony and in the absence of any evidence to the contrary, I find that the Tenant did not serve the Tenant's Application for Dispute Resolution to the Landlord.

I find that the Tenant did not diligently pursue the Tenant's Application for Dispute Resolution. I therefore dismiss the entire Application for Dispute Resolution, without leave to reapply.

Preliminary Matter #2

At the hearing, the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent and unpaid hot tub fees from August of 2024.

I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent/fees that are currently due, including unpaid rent/fees that have accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent/fees that are currently due.

Issue(s) to be Decided

Should the Landlord be granted an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities?

Is the Landlord entitled to compensation for unpaid rent/utilities and/or for damage to the unit?

Is the Landlord entitled to retain any portion of the Tenant's security deposit?

Background and Evidence

The Landlord submits that:

- The tenancy began on April 15, 2024
- The Tenant agreed to pay monthly rent of \$2,500.00 by the first day of each month, beginning May 01, 2024
- The Tenant still owes \$1,250.00 for June of 2024, \$2,500.00 for July of 2024, and \$2,500.00 for August of 2024
- Prior to the start of the tenancy, the Tenant agreed to pay \$100.00 per month for using the hot tub
- Electronic communications submitted by the Landlord show the Tenant agreed to this fee
- The Tenant has not paid this fee for April, May, June, July, or August of 2024
- A Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 08, 2024, was posted on the door of the rental unit on July 08, 2024 (This was the Notice submitted in evidence by the Tenant)
- On April 15, 2024, the Tenant paid the first half of the security deposit, in the amount of \$625.00
- On May 02, 2024, the Tenant paid the second half of the security deposit, in the amount of \$625.00
- The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 08, 2024, declared that the unit must be vacated by July 18, 2024
- They are aware that the Tenant has disputed the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities
- The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 03, 2024, which the Landlord submitted in evidence is not the Notice they posted on the Tenant's door
- The Tenant has not informed them the rental unit has been vacated
- They do not know if the unit is still being occupied

- The Landlord is claiming \$200.00 to repair the door that leads to the electrical panel
- The Tenant reported a tripped breaker switch on June 24, 2024
- The Tenant concluded that the Landlord was not responding quickly enough to their request to re-set the breaker, so the Tenant broke the door leading to the electrical panel
- The Tenant told the Landlord that the door was broken by the fire department
- The Landlord submitted a letter from the fire department, which declares the fire department did not attend the unit on June 24, 2024
- The Landlord is seeking compensation of \$22.39 because the Tenant ordered a sports channel using the Landlord's account, which was not blocked by the Landlord
- The Landlord is seeking compensation of \$27.99 because the Tenant ordered a movie using the Landlord's account, which was not blocked by the Landlord

Analysis

On the basis of the undisputed evidence, I find that the Tenant agreed to pay rent of \$2,500.00 in rent by the first day of each month and that they currently owe \$6,250.00 in rent for the period between June 01, 2024 and August 30, 2024.

Section 26(1) of the Act stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

As there is no evidence to establish that the Tenant had the legal right to withhold rent and there is no evidence to show they have vacated the unit, I find that the Tenant currently owes \$6,250.00 in rent for the period between June 01, 2024 and August 31, 2024. I therefore order, pursuant to section 67 of the Act, that the Tenant must pay this amount to the Landlord.

On the basis of the undisputed evidence, I find that the Tenant agreed to pay rent \$100.00 per month for using the hot tub. I find that this was a service they agreed to pay for as part of the tenancy, and that it should be considered rent. I therefore find they were required to pay this fee, pursuant to section 26 of the Act.

On the basis of the undisputed evidence, I find that the Tenant has never paid the hot tub fee. I therefore find that the Tenant owes the Landlord \$50.00 for the period

between April 15, 2024 and \$400.00 for the period between May 01, 2024 and August 31, 2024. I therefore order, pursuant to section 67 of the Act, that the Tenant must pay this amount to the Landlord.

Section 46(1) of the Act stipulates that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. As the Tenant did not pay all the rent when it was due on July 01, 2024, I find that the Landlord had the right to serve the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to section 46(1) of the Act.

Section 46(4)(a) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. As the Tenant has not paid the overdue rent, I find that this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 08, 2024, remains in full force and effect. I therefore grant the Landlord's Application for Dispute Resolution for an Order of Possession.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 32(3) of the Act requires tenants to repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

On the basis of the evidence before me, I find that the Tenant damaged a door leading to the electrical panel during this tenancy. In the Tenant's Application for Dispute Resolution the Tenant inferred that the fire department was called to address the issue with the tripped breaker, however the letter from the fire department refutes that submission. I therefore find it reasonable to conclude that it was damaged by the Tenant and that the Tenant is obligated to repair it, pursuant to section 32(3) of the Act.

On the basis of the electronic communications with the individual who repaired the door, which were submitted in evidence, I find that the Landlord was charged \$200.00 to

repair the door and that the Landlord is entitled to compensation in this amount, pursuant to section 67 of the Act.

On the basis of the undisputed evidence, I find that the Tenant charged \$22.39 and \$27.99 in streaming charges to the Landlord's account, without authorization from the Landlord.

Section 67 of the Act grants me authority to order a tenant to pay compensation to a landlord if the landlord suffers a loss because the tenant breached the Act, the Residential Tenancy Branch Regulations, or the tenancy agreement. I am not aware of anything in the legislation or the tenancy agreement that prohibits the Tenant from making charges to the Landlord's account. I therefore find I do not have jurisdiction over these charges, and I must dismiss the claim for \$50.38, without leave to reapply.

The Landlord retains the right to seek compensation of \$50.38 from the BC Civil Resolution Tribunal.

I find the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee paid to file the Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective 7 days after it is served to the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$7,000.00, which includes \$6,250.00 in unpaid rent, \$450.00 in hot tub fees, \$200.00 for a damaged door, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$1,250.00 plus interest of \$10.38, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$5,739.62. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that 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: August 13, 2024

Residential Tenancy Branch