



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes Tenant: CNR MNR FF
Landlord: OPR MNR FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 1, 2025. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided affirmed testimony. The Landlord was represented by an agent (referred to as the Landlord), and the Tenant was present. Both parties confirmed receipt of each others application and Notice of Dispute Resolution Proceeding packages. The Tenant confirmed receipt of the Landlord’s evidence, and stated he provided a few pages of his own evidence, but this evidence was not uploaded for me to view and the Landlord stated he only got the Notice of Dispute Resolution Proceeding and no evidence from the Tenant. As the Tenant failed to provide the RTB or the respondent with his evidence, I find it is not admissible.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Should the 10 Day Notice to End Tenancy be cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties agreed in the hearing that monthly rent in the amount of \$2,350.00 was to be paid on the first of each month. Both parties also agreed that the Landlord currently holds a security deposit in the amount of \$1,175.00. The Landlord stated that the Tenant failed to pay any rent for February or March, and now owes \$4,700.00 in rent for these months.

A copy of the 10 Day Notice was provided into evidence, which shows that as of March 1, 2025, the Tenant owed \$2,350.00 which was unpaid from the following month. The Landlord stated that no rent has been paid since that time.

The Tenant acknowledged receipt of the 10 Day Notice on March 1, 2025, and acknowledged that he has not paid any rent for February or March 2025. He then went on to state that he has had issues with mould in the rental unit. He stated he hired a mould technician to come and put some spray on the windows. The Tenant feels he should be allowed to deduct this from rent, as an emergency repair. However, no copies of invoices or bills were provided.

Analysis

Section 26 of the *Act* confirms 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 rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

If the Tenant had emergency repairs completed, then this may give him lawful reason to withhold rent to cover those expenses. Section 33(3) of the *Act* allows for a tenant to complete an emergency repair when the landlord has not completed the emergency repair in reasonable amount of time and 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.

Section 33(1) of the *Act* defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property and for the purpose of repairing major leaks in pipes or roof, damaged or blocked water or sewer pipes or plumbing repairs, primary heating system, damaged or defective locks

that give access to a rental unit, electrical systems or in prescribed circumstances, a rental unit or residential property.

I do not find any of the issues raised by the Tenant qualify as emergency repairs. I find the Tenant has not demonstrated that he had any other reason to legally withhold rent. He does not dispute that he has not paid February and March rent.

I find the 10 Day Notice was received by the Tenant on March 1, 2025. Further, I find that rent was not paid when due on February 1, and March 1, and that \$4,700.00 is currently outstanding in terms of rent. Further, I find that filing an application for dispute resolution does not give a tenant a right under the *Act* to deduct all or a portion of the rent.

As rent has not been paid when due, and there is insufficient evidence before me that the Tenant had a right under the *Act* to deduct all or a portion of rent, I find that the Tenant's Application is dismissed. When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. Having reviewed the 10 Day Notice, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective 7 days after it is served on the Tenant.

Next, I turn to the Landlord's request for a monetary order for unpaid rent. After considering the evidence before me, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay rent in the amount of \$4,700.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to section 72 of the *Act*, I authorize the Landlord to retain the security deposit, which amounts to \$1,212.64 including interest, to offset what is owed by the Tenant. I issue a monetary order for the amounts beyond this.

In summary, I grant the monetary order in the amount of \$3,587.36.

Conclusion

The Tenant's application to cancel the 10 Day Notice is dismissed.

The landlord is granted an order of possession effective **7 days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of \$3,587.36. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: April 01, 2025

Residential Tenancy Branch