



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNRT, FFT**

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 10 Day notice to End Tenancy for Unpaid Rent and for a monetary order for emergency repairs made by the tenant.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the parties had exchanged their respective hearing materials.

Preliminary and Procedural Matters

I noted that in filing this Application for Dispute Resolution the tenant identified the landlord as being a business name but the landlord's name on the 10 Day Notice was that of an individual. The individual landlord named on the 10 Day Notice was at the hearing and he stated the property is owned by a corporation and he is one of the shareholders of the corporation. The name of the corporate landlord is identified on the tenancy agreement and I amended the style of cause to reflect the corporate landlord named on the tenancy agreement.

As for the tenant's monetary claim for recovery of emergency repairs, the tenant requested compensation totalling \$31,870.13 in completing the Application for Dispute Resolution but the tenant did not provide any further details on the Application for Dispute Resolution. Nor, did the tenant provide a Monetary Order worksheet, written submission detailing the nature of the emergency repairs or other relevant facts such as the date(s) of expenditures or detailed calculation at the time of filing.

Section 59(2)(b) of the Act requires that:

(2) An application for dispute resolution must

(b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings

[My emphasis underlined]

Rule 2.5 of the Rules of Procedure provides that an Application for Dispute Resolution is to be accompanied by a detailed calculation of any monetary claim being made and that calculation is to be served along with the proceeding documents.

The tenant did serve the landlord with a Monetary Order worksheet on October 21, 2020. The Monetary Order worksheet is dated October 12, 2020 and provides for a listing of several claims totalling \$30,352.50. The Monetary Order worksheet is accompanied by a document prepared by the tenant entitled "Extra Work Order" that totals \$30,352.50 plus GST; and, the tenant's other evidence.

Considering this Application for Dispute Resolution was made on September 6, 2020 and set for hearing October 27, 2020, I find the tenant's service of the claim details and calculation upon the landlord on October 21, 2020, which is only five clear days before the hearing date, to be late and not in keeping with the requirements of section 59 of the Act and Rule 2.5 of the Rules of Procedure.

In light of the above, I find the tenant did not sufficiently set out his monetary claim for compensation in serving his Application for Dispute Resolution and the tenant's monetary claim is dismissed with leave to reapply. However, I noted that the tenant's evidence included that pointing to a contract for services performed on the property by the tenant. I cautioned that tenant that the contracts for services between a landlord and a tenant does not fall within the jurisdiction of the Residential Tenancy Branch to determine unless the contract impacts a term of tenancy, such as the obligation to pay rent or make deductions from rent. The tenant stated that there was agreement by the landlord to make deductions from rent owed. Accordingly, out of an abundance of fairness to the tenant, I have considered the tenant's late served evidence with the view of determining whether the tenant has a basis for cancellation of the subject 10 Day Notice. The landlord did not indicate any object to reviewing the tenant's evidence package.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The tenancy started on September 1, 2016 and the tenant paid a security deposit of \$1200.00 and a pet damage deposit of \$200.00. The rent was initially set at \$2400.00 payable on the first day of every month; however, the rent was lowered to \$2100.00 per month due to loss of the large greenhouses on the property.

The parties have been to two dispute resolution proceedings before. The first time was on February 21, 2020 and that hearing dealt with the tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent issued in December 2019 in respect of rent owed for July 2019 through December 2019 (file number provided on the cover page of this decision). The 10 Day Notice was cancelled as the presiding Arbitrator found the landlord's ledger inconsistent with the landlord's testimony and the amount indicated on the 10 Day Notice. The tenant had also applied for several other remedies including authorization to reduce rent and monetary compensation for work he had performed on the property but the presiding Arbitrator severed these other issues and dismissed them with leave to reapply. The tenant was awarded recovery of the \$100.00 filing fee.

The second dispute resolution proceeding was held on August 28, 2020 and dealt with the landlord's application for an Order of Possession for unpaid rent based on a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 9, 2020 with respect to unpaid rent for February 2020 (file number referenced on the cover page of this decision). The presiding Arbitrator found the tenant had nullified the 10 Day Notice by paying the outstanding rent within five days of receiving the 10 Day Notice, on July 14, 2020. In the proceeding, as recorded in the decision, the tenant was cautioned that the tenant must have the authorization of the landlord or an Arbitrator to withhold or reduce rent otherwise payable.

On September 1, 2020 the landlord served the tenant with another 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") indicating rent of \$2100.00 was not paid for January 2020 and a stated effective date of September 11, 2020. The tenant filed to dispute the 10 Day Notice within the time limit for doing so.

The parties provided consistent submissions that the tenant did not pay the landlord rent for January 2020 when it was due or after receiving the 10 Day Notice.

The tenant was of the position he does not owe the rent as the landlord agreed to make deductions from rent for work he had done to the property and because of a retroactive rent reduction the landlord agreed to make. Below, I summarize the parties' positions with respect to these two issues.

Retroactive rent reduction

The parties provided consistent statements that in April 2019 the landlord's son, who had regular communication with the tenant, informed the tenant that the landlord would retroactively reduce the rent. I heard that the tenant and the landlord met at a restaurant, in person, in April 2019 to discuss the reduction of rent retroactively. As to what was agreed upon, the parties were dispute as to when the reduced rental rate was to take effect. According to the tenant it was to take effective starting January 2017 as that is when the greenhouses were heavily damaged. According to the landlord the rent reduction was to take effect starting January 2019 as that is when the landlord was notified of the damage to the greenhouses by the tenant, even though the landlord acknowledged he had been to the property before January 2019.

I was provided photographs of the greenhouses which show several very large greenhouses. The tenant stated that he used them for storage prior to the damage.

The tenant was of the position the landlord's record keeping is unreliable and the landlord enters whatever amount he wishes into the ledger. The tenant pointed to a ledger the landlord had provided to him in February 2020 for the first dispute resolution proceeding. The ledger shows the monthly rent was recorded as being \$2400.00 until March 2018 and then it was reduced to \$2200.00 starting April 2018.

I asked the landlord to explain the rent reduction to \$2200.00 starting April 2018 in comparison with his testimony that the rent was reduced to \$2100.00 starting January 2019. The landlord responded that he had reduced the rent to \$2200.00 starting in April 2018 in response to the tenant having financial difficulty after his mother passed away. The tenant responded that this was the first time he was hearing that reason.

The tenant pointed out that another ledger provided to the tenant for the second dispute resolution proceeding in August 2020 reflects a \$100.00 credit being applied to rent for

February 2020 but that it does not appear in the ledger the landlord produced for this hearing. The landlord responded that the credit was missed from the most recent ledger in error.

Deductions for work performed on property

The tenant submitted that he has done a lot of work on the property including removal of the damaged greenhouses, excavating and drainage work, landscaping, tree removal, and, replacement of electrical outlets. The tenant submitted that he gave the landlord his receipts and that the landlord agreed to deduct the receipts from rent.

The tenant pointed to a text message from the landlord's son in April 2019 where the landlord's son stated: "We went over the receipt you gave us and were willing to reimburse things regarding the greenhouse clean up and the water drainage work in the front".

The tenant pointed to the ledger the landlord gave him in approximately February 2020 where the landlord wrote at the bottom "Landlord will deduct from the outstanding rent for work done by the tenant if valid receipts are provided" and an amount of \$21972.70 was listed next to this line. Below, I have reproduced the ledger:

		Rent agreed and collectible	Date of Rent collected	Amount collected	Tenant owes Landlord	Accumulated Overdue Rent
		\$	yyyy-mm-dd	\$	\$	
2016	Sep	2,400.00			(2,400.00)	
	Oct	2,400.00	2016-10-14	100.00	(2,300.00)	
	Nov	2,400.00			(2,400.00)	
	Dec	2,400.00	2016-12-14	2,400.00	0.00	
2017	Jan	2,400.00			(2,400.00)	
	Feb	2,400.00	2017-02-02	2,400.00	0.00	
	Mar	2,400.00	2017-03-01	2,400.00	0.00	
	Apr	2,400.00	2017-04-03	2,400.00	0.00	
	May	2,400.00	2017-04-26	2,400.00	0.00	
	Jun	2,400.00	2017-06-27	2,400.00	0.00	
	Jul	2,400.00			(2,400.00)	
	Aug	2,400.00	2017-08-08	2,800.00	400.00	
	Sep	2,400.00	2017-09-20	2,400.00	0.00	
	Oct	2,400.00			(2,400.00)	
	Nov	2,400.00			(2,400.00)	
	Dec	2,400.00	2017-12-06	2,400.00	0.00	
2018	Jan	2,400.00			(2,400.00)	
	Feb	2,400.00	2018-02-19	2,400.00	0.00	
	Mar	2,400.00	2018-03-24	1,250.00	(1,150.00)	
	Apr	2,200.00			(2,200.00)	
	May	2,200.00	2018-05-12	2,500.00	300.00	
	Jun	2,200.00			(2,200.00)	
	Jul	2,200.00			(2,200.00)	
	Aug	2,200.00			(2,200.00)	
	Sep	2,200.00			(2,200.00)	
	Oct	2,200.00			(2,200.00)	
	Nov	2,200.00	2018-11-05	1,500.00	(700.00)	
	Dec	2,200.00	2018-12-20	1,200.00	(1,000.00)	
2019	Jan	2,200.00	2019-01-08	1,200.00	(1,000.00)	
	Feb	2,200.00			(2,200.00)	
	Mar	2,200.00	2019-03-13	1,200.00	(1,000.00)	(38,650.00) 2019-03-14
	Apr	2,200.00	2019-04-15	2,400.00	200.00	
	May	2,200.00	2019-05-20	2,000.00	(200.00)	
	Jun	2,200.00	2019-07-02	1,900.00	(300.00)	
	Jul	2,200.00	2019-07-02	500.00	(1,900.00)	
	Aug	2,200.00			(2,200.00)	
	Sep	2,200.00	2019-09-04	2,300.00	100.00	
	Oct	2,200.00	2019-10-10	2,500.00	300.00	(45,150.00) 2019-10-04
	Nov	2,200.00			(2,200.00)	(44,850.00) 2019-11-19
	Dec	2,200.00			(2,200.00)	(47,050.00) 2019-12-09
2020	Jan	2,200.00			(2,200.00)	
	Feb	2,200.00			(2,200.00)	
		96,200.00		44,950.00	(51,450.00)	2020-02-10
Landlord will deduct from the outstanding rent for work done by the tenant if valid receipts are provided					\$ 21,972.70	
Total Owning if receipts are provided					<u>\$ (29,477.30)</u>	2020-02-10

Upon examination, the landlord was uncertain where the amount of \$21972.70 was determined. The tenant testified that he did not know how the landlord arrived at \$21972.70 since the tenant gave him an invoice the same as the tenant provided for this proceeding which totals \$30352.50 before tax.

Below, I have reproduced the tenant's invoice (with his name omitted for privacy):

Description of Work:		Repairs to lot drainage/storm, lot cleanup, interior renovations requested by Landlord		
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DATE	Manpower	HOURS	RATE	EARNINGS
	Labour - Journeyman	55.0	\$35.00	\$1,925.00
		Total Cost		\$1,925.00

DATE	Equipment	HOURS	RATE	EARNINGS
See Backup	Excavator - Kabota U-35, C/W Operator.	65.0	\$225.00	\$14,825.00
See Backup	Side By Side - Moving Materials	15.0	\$125.00	\$1,875.00
		Total Cost		\$16,500.00

DATE	Supplier Equipment	BIN D&R	RATE	EARNINGS
See Backup	Garbage Bins	2.0	\$300.00	\$600.00
		Total Cost		\$600.00

	Rental Agreement - Rent Decrease	Month	RATE	EXTENSION
	Multiple Structures Collapsed On Belongings	12.0	\$300.00	\$3,600.00
	Multiple Structures Collapsed On Belongings	12.0	\$300.00	\$3,600.00
		Total Cost		\$7,200.00

	Material	QUANTITY	UNIT PRICE	EXTENSION
See Backup	Gravel - For bedding storm service and trenches.	3	\$400.00	\$1,200.00
See Backup	Wood chips - landscaping & drainage	2	\$200.00	\$400.00
See Backup	Fuel - For excavator.	650	\$1.35	\$877.50
See Backup	Piping - For storm service repairs.	30	\$15.00	\$450.00
See Backup	Culvert - 12" concrete piping.	12	\$100.00	\$1,200.00
		Total Cost		\$4,127.50

Own Forces TOTAL		\$30,352.50
Overhead	N/A	
Profit	N/A	
SUBTOTAL #1		\$30,352.50
Overhead	N/A	
Profit	N/A	
SUBTOTAL #2		\$0.00
COMBINED SUBTOTAL (#1 & #2)		\$30,352.50
INSURANCE @ \$1.97/\$1,000		
BONDING @ \$9.08/\$1,000		
TOTAL		\$30,352.50
G.S.T. (5%)		1517.63
GRAND TOTAL		\$31,870.13

Oct 12/2020

The landlord acknowledged the tenant gave his son receipts but the landlord stated he did not have them before him and he had not provided them as evidence; however, the landlord recalled that the receipts did not total that much. The tenant testified he did not keep a copy of the receipts. The tenant also stated that much of the work performed on the property was done by him and that he purchased materials with cash.

The landlord was of the position that they did not reach an agreement to deduct a certain amount from rent, even the \$21972.70, as he did not get valid receipts from the tenant totalling that amount.

The landlord was of the position he tried a number of times to meet with the tenant to reach an agreement with respect to the value of the work the tenant performed but the tenant would not meet with him. The tenant responded that he missed only one meeting.

The landlord testified that the invoice the tenant prepared for this proceeding had not been seen before.

During the hearing, I heard the tenant paid most of the rent for September 2020 (with the exception of \$45.00) but that he had yet to pay any monies for October 2020.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances where a tenant has the legal right to make deductions or withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution.

In this case, the tenant did not pay the landlord rent for January 2020 before or after receiving the 10 Day Notice of September 1, 2020 but the tenant disputed the 10 Day Notice. The tenant is of the position he does not owe the rent because he is entitled to a retroactive rent reduction given to him by the landlord and he obtained the landlord's consent to deduct the value of work he performed on the property.

A tenant may obtain the right to reduce rent payable by way of the landlord's consent or agreement or by way of authorization given by an Arbitrator. In this case, the tenant did not have authorization from an Arbitrator and the parties were in dispute as to the extent of the rent reduction to be given to the tenant and the amount of credit to be given to the tenant for work he performed on the property.

I find it unnecessary to determine the extent of the rent reduction to be given to the tenant or the amount of the credit the tenant was entitled to make, if any, after analyzing the tenant's own figures I find he was not in a credit position before the January 2020 rent became payable, meaning rent was payable for January 2020. To illustrate:

Even if I were to accept the tenant's position that the landlord agreed to reduce the rent to \$2100.00 per month starting January 2017; and, I were to give the tenant credit for the work he performed on the property using the tenant's own figures, I find rent was still outstanding prior to January 2020, meaning the tenant was not in a credit position when rent became payable for January 2020 as seen in the table below:

	Rent receivable	Rent paid/collected	Outstanding rent
Totals on Feb 2020 ledger	\$96200.00	\$44950.00	\$51250.00
Less: Jan 2020 and Feb 2020 rent appearing in ledger	(2200.00) (2200.00)		(2200.00) (2200.00)
Totals to Dec 2019	\$91800.00	\$44950.00	\$46850.00
Adjust ledger to reflect rent reduced to \$2100.00/mo from Jan 2017 through Dec 2019	(15 months x \$300.00) + (21 months x \$100) = (\$6600.00)		\$(6600.00)
Totals adjusted for rent reduction to Jan 2017	\$85200.00	\$44950.00	\$40250.00
If credit given for tenant's work on property (less rent reduction included in invoice as rent reduction is already taking into account above)		\$30352.50 less \$7200.00 = 23152.50	
Totals after credit given for work performed (if tenant's position accepted)	\$85200.00	\$68102.50	\$16997.50

In light of all of the above, I find the tenant was required to pay rent of \$2100.00 for January 2020 as he was not in a credit position even if I were to accept his position and his figures fully. In any circumstance, it remains that the tenant failed to pay the rent when due or after receiving a 10 Day Notice to End Tenancy for Unpaid Rent. Therefore, I dismiss the tenant's request that I cancel the 10 Day Notice.

Having dismissed the tenant's request to cancel the 10 Day Notice, I proceed to determine whether the landlord is entitled to an Order of Possession.

Section 55(1) of the Act provides as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I have dismissed the tenant's application to cancel the 10 Day Notice. Upon review of the 10 Day Notice provided to me, I am satisfied that it meets the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

Provided to the landlord is an order o Possession effective two (2) days after service upon the tenant.

Conclusion

The tenant's application to cancel the 10 Day Notice dated September 1, 2020 is dismissed and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The tenant's request for monetary compensation is dismissed with leave.

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: October 27, 2020

Residential Tenancy Branch