# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNR, MNDCT, MNRT, LRE, OLC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on September 3, 2020, wherein the Tenant requested the following relief:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on September 2, 2020 (the "Notice");
- monetary compensation from the Landlord;
- an order restricting the Landlord's right to enter the rental unit;
- an order that the Landlord comply with the *Residential Tenancy Act,* the *Residential Tenancy Regulations,* and/or the residential tenancy agreement.

The hearing was conducted by teleconference at 11:00 a.m. on October 15, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was also represented by legal counsel, L.S.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Matters to be Determined

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure.* At all times an Arbitrator is guided by *Rule 1.1* which provides that Arbitrators must ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

*Residential Tenancy Branch Rule of Procedure 2.3* provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I also find that this claim is not sufficiently related to the Tenant's monetary claim; accordingly, I exercise my discretion and dismiss the Tenant's monetary claim with leave to reapply.

For reasons which will be further detailed, matters which relate to the continued tenancy are no longer relevant; accordingly, those claims are dismissed without leave to reapply.

Issues to be Decided

1. Should the Notice be cancelled?

2. If not, is the Landlord entitled to an Order of Possession?

3. Should the Tenant recover the filing fee?

Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord testified that he purchased the rental home from the previous landlord and did not have a written tenancy agreement with the Tenant. The Landlord purchased the property with a completion date of May 31, 2020. He testified that the Tenant has not paid any rent since he took over ownership of the home.

A copy of two residential tenancy agreements were provided in evidence by the Tenants, indicating that the tenancy began September 2013. Counsel for the Landlord submitted that these documents were not signed and therefore questioned their authenticity.

The parties attended a prior hearing before the Residential Tenancy Branch on August 17, 2020; (the file number for that matter is included on the unpublished cover page of this my Decision.) The Landlord provided a copy of the Decision arising from that hearing in which the Arbitrator canceled a 2 Month Notice to End Tenancy for Landlord's Use. Of relevance to this hearing, the Tenant, A.L. admitted under oath that monthly rent was $3,850.00.

The Landlord issued the Notice on September 2, 2020. The Notice indicated that the sum $5,488.71 was owing as September 1, 2020. Counsel confirmed that this sum only included rent owing from August 18, 2020 to September 1, 2020. Counsel further confirmed the Tenant also failed to pay rent from June 1, 2020 to August 17, 2020, but as that period falls within the "specified period" pursuant to the COVID-19 (*Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation* the Landlord did not include those amounts on the Notice.

The Notice was served on the Tenant on September 2, 2020 in two different ways; first it was mailed to the Tenants' residence; and, secondly, the Notice was also posted to the door.

The Tenants failed to pay the outstanding rent however, they applied for dispute resolution on September 3, 2020.

Counsel confirmed that the Tenants failed to pay rent for October 2020, such that the outstanding rent from August 18, 2020 to October 31, 2020 is $9,338.71.

In response to the Landlord's testimony and submissions, the Tenant confirmed that rent is $3,850.00; she stated that she pays $1,500.00 and her mother pays $2,350.00. The Tenant claimed that she also paid a security deposit of $1,925.00. The Tenant also

testified that when the tenancy began, they were asked to pay their last month's rent of $3,850.00 upfront.

The Tenant further testified that the previous Landlord collected all the rent in full until June 2020. She confirmed that she did not pay her August, September, or October rent and stated that she is disputing this notice because the Landlord has been "underhanded" in every way.

The Tenant claimed that she also paid for emergency repairs, including replacing a hot water tank and the dishwasher. The Tenant stated that the hot water tank was leaking into one of the downstairs suites for approximately one week. She claimed this occurred some time in August 2020 although she could not remember the exact date. She stated that the first time she told the Landlord about the hot water tank was also in August of 2020 when he first came to the home. She stated that the second time she informed him was when he attended the next day and inspected the basement suite. The Tenant claimed that she replaced the hot water tank at a cost $2,100.00 two days after she told him about this.

The Tenant also claimed that she replaced the dishwasher in May or June of 2020 as it was leaking into the basement suite. She confirmed that she did not give the Landlord two opportunities to repair or replace the dishwasher.

In terms of other "emergency repairs" in August, September or October the Tenant confirmed that she did not pay for any at that time.

The Tenant also noted that since the Landlord issued the 2 Month Notice in late July of 2020, her subtenants stopped paying rent such that she has not been able to afford to pay the rent. She stated that the little money that they collected from them is how they replaced the water heater.

The Tenant stated that the rental unit has not been painted in over 8 years and she painted the downstairs unit. The Tenant claimed that she had a verbal agreement with the previous Landlord that she would be reimbursed for her time dealing with the landscaping as well as other tasks such as drywall repair and caulking. She confirmed that she believed this should be taken into consideration in terms of any rent outstanding.

The Tenant also requested consideration of the $100.00 filing fee she was awarded in the August hearing, as well as the current hearing.

Analysis

As discussed during the hearing a tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

> **Rules about payment and non-payment of rent**
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> **26** (1)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.

As also noted during the hearing, there are only four occasions, permitted under the *Residential Tenancy Act,* where a tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In this case, the Tenants conceded that they did not pay rent in August, September or October. I accept the Landlord's calculations that as of the date of the hearing, the sum of $9,338.71 was outstanding for rent.

Pursuant to the August 17, 2020 Decision, the Tenants were authorized to reduce their rent by $100.00 as compensation for the filing fee. I therefore find the Tenants had the legal authority to withhold this sum.

The Tenants claimed that they paid the last month's rent "up front". Such payments are characterized as a deposit and may entitle a tenant to withhold rent pursuant to section 19(2) of the *Act.* That said, the Tenants did not provide any documentary evidence to support this claim. Notably, this pre-payment was not referenced in either of the tenancy agreements provided in evidence by the Tenants. On this basis, I find the Tenants have submitted insufficient evidence to support a finding that they paid their last months' rent as a deposit.

The Tenants also argued that they paid for emergency repairs such that they should be authorized to withhold rent equivalent to the cost of those repairs. In this respect she

testified that they purchased a new hot water tank at a cost of $2,105.00. The Landlord agreed the Tenants paid this sum but argued he could have replaced it at a lesser cost. The Tenants also sought recognition for the cost of replacing the dishwasher. She conceded that she did not give the Landlord a reasonable opportunity to make this repair/replacement.

A tenant may withhold rent for the cost of emergency repairs provided that the tenant follows section 33 of the *Act;* for clarity I reproduced that section as follows:

> **33** (1)In this section, "emergency repairs" means repairs that are
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> (a)urgent,
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> (b)necessary for the health or safety of anyone or for the preservation or use of residential property, and
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> (c)made for the purpose of repairing
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> (i)major leaks in pipes or the roof,
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> (ii)damaged or blocked water or sewer pipes or plumbing fixtures,
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> (iii)the primary heating system,
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> (iv)damaged or defective locks that give access to a rental unit,
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> (v)the electrical systems, or
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> (vi)in prescribed circumstances, a rental unit or residential property.
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> (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.
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> (3)A tenant may have emergency repairs made only when all of the following conditions are met:
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> (a)emergency repairs are needed;
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> (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;
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> (c)following those attempts, the tenant has given the landlord reasonable time to make the repairs.
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> (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.

I accept the Tenant's evidence that she spoke to the Landlord about the hot water tank leak when he inspected the rental home. I also accept her testimony that she replaced the hot water tank within two days of informing him of the leak. In doing so, I find she failed to give him reasonable time to complete this repair as required by section 33(3)(c). As previously noted, I have dismissed the Tenants' claim for monetary compensation; they are at liberty to pursue compensation from the Landlord. However, while the Tenants may ultimately be entitled to some compensation from the Landlord for this expense, I am not satisfied they were entitled to withhold the hot water tank replacement cost of $2,105.00 from their rent pursuant to section 33(7). Further, I find the dishwasher replacement fails to meet the definition of emergency repair in section 33(c). Again, while the Tenants may be entitled to some compensation for this expense, I am not satisfied they are entitled to withhold the replacement cost from their rent.

The Tenant testified that when the Landlord issued the 2 Month Notice in July of 2020 her sub-tenants stopped paying rent such that she could no longer afford the rent. As discussed during the hearing, the Tenants were responsible for paying the full rent, irrespective of whether they collected rent from their sub-tenants.

The Tenants also argued that they had a verbal agreement with the previous landlord that they would be compensated for work around the rental home and the yard. I find they have submitted insufficient evidence to support such a finding.

In sum, and save and except for the $100.00 filing fee awarded to the Tenants in August, I find the Tenants had no legal authority to withhold rent. Consequently, I dismiss the Tenants' request for an Order canceling the Notice.

Pursuant to section 55 of the *Act* I award the Landlord an Order of Possession, effective two days after service. This Order must be served on the Tenants and may be filed and enforced in the B.C. Supreme Court.

The Tenants have been unsuccessful in their claim, as such I decline their request for recovery of the filing fee.

Conclusion

The Tenants' request for an Order canceling the Notice is dismissed. The tenancy shall end in accordance with the Notice.

The Tenants' request for monetary compensation from the Landlord is dismissed with leave to reapply.

As the tenancy is ending, the Tenants' request for an order limiting the Landlord's right to enter the rental unit, and an order that the Landlord comply with the legislation and tenancy agreement are dismissed without leave to reapply.

The Tenants' request for recovery of the filing fee is also dismissed without leave to reapply.

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 15, 2020

Residential Tenancy Branch