



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAI COMMERCIAL OKANGAN
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT, RR, OLC, LATE, MNRT, PSF, LRE, MNDCT, AAT, RP

Introduction

This hearing dealt with two tenant's applications pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call with the assistance of an advocate and provided affirmed testimony. The landlord and his agent attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlord with notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 25, 2021. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence in person. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset, the tenant's two applications were clarified. The tenant confirmed that he made two applications that are identical save and except for the request to cancel the notice to end tenancy for unpaid rent (CNR).

Extensive discussions took place in which the tenant argued that the request for the cost of emergency repairs (MNRT) was related to the dispute of the 10 Day Notice (CNR).

As such, the tenant's initial application filed February 1, 2021 with an amendment are dismissed with leave to reapply. The hearing proceeded on the tenant's application file to dispute the 10 Day Notice and if time allows the tenant's request for the cost of emergency repairs. The remaining portions of that application are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

After 63 minutes the hearing was adjourned due to a lack of time. Both parties were advised of the adjournment process. Both parties were cautioned that no new evidence was to be submitted nor would it be accepted.

On September 2, 2021 the hearing reconvened with the named landlord, M.M., and his agent, T.P who attended the hearing, made submissions and provided evidence. The hearing was paused until 10 minutes past the start of the scheduled hearing time to allow the tenant and opportunity to call in. The hearing began at 10 minutes past the start of the scheduled hearing time in the absence of the tenant.

At 15 minutes past the start of the scheduled hearing time, the tenant called into the conference call hearing, made submissions and presented evidence.

The hearing concluded after 82 minutes and as a result the tenant's request for a monetary claim for the cost of emergency repairs was dismissed with leave to reapply due to a lack of time. The tenant's application to cancel the 10 Day Notice for Unpaid Rent and recovery of the filing fee were addressed.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated March 10, 2021. The 10 Day Notice stated that the tenant failed to pay rent of \$1,313.15 that was due on March 1, 2021 and provides for an effective end of tenancy date of March 26, 2021.

The landlord clarified that there is unpaid rent:

\$838.46	Unpaid Rent, February 2021
\$474.69	Unpaid Rent, March 2021
\$1,313.15	Total

The tenant confirmed that he withheld rent arguing that he had authorization in a Decision dated February 1, 2021 (Dispute Resolution File Number noted on the cover of this Decision). The tenant stated that in a previous decision dated February 1, 2021 the tenant was granted authorization that if the heat was not restored by 5:30pm on that date by the landlord, the tenant may retain a qualified electrician or qualified home heating workman to inspect and resolve the heating issue. The tenant would be authorized to recover the cost of such from the landlord.

A review of the original decision dated February 1, 2021 states in part,

... At hearing I directed that if the tenant's heat is not restored by 5:30 o'clock p.m. today, the tenant is authorized to retain a qualified electrician or qualified home heating workman to attend at the property and correct the matter. If it becomes necessary, if entry by that electrician or home heating worker is denied by any tenant on the property, the landlord is required to authorize such entry as an emergency entry. The tenant is entitled to recover the cost of any such electrician or home heating workman from the landlord...

The tenant stated that the landlord failed to turn on the heat and as a result hired a technician as shown by a submitted copy of an invoice dated February 1, 2021 and an Incident Report which consisted of 2 pages from the technician was submitted for reference.

The landlord disputed this claim arguing that as soon as the Residential Tenancy Branch Hearing on February 1, 2021 had concluded he contacted the other tenant to make sure the tenant's heat was on. The landlord stated that he was assured by the other tenant that all breakers were on. The landlord also argued that according to the Incident Report provided by the tenant, the tenant had contacted the electrician for an emergency electrical service. The landlord argued that according to the incident report the tenant's main concern was the lights and plug that were out as well as the safety of the electrical throughout the house. The landlord stated that the previous Arbitrators Order was specific to heat only. The landlord referred to a submitted copy of the Incident Report dated February 1, 2021 which states in part,

I was responding to an Emergency Electrical Service Call, I shows up at approximately 7:00pm and called the Customer/Tenant upon arrival. We then met at the front door where I proceeded to gather as much as possible to assess the electrical issues. The Customer (S.) indicated that the upstairs lights and plugs were not working at all. His main concern was the lights and plug that were out as well as the safety of the electrical throughout the house. I went upstairs with S. and checked the lights and plugs for correct operation, polarity, and power. I found that multiple circuits were not receiving power...

The tenant argued that the emergency service was for the electrical system which provides the heat. The tenant was unable to provide any supporting evidence that the emergency service was for the heat and not the upstairs lights and plugs as listed by the Incident Report.

The tenant stated that for the February 2021 rent, the tenant withheld \$401.63 for the cost of the electricians invoice dated February 1, 2021. The tenant stated that the remaining unpaid rent was \$424.96 which is for the cost of the tenant buying 4 space heaters online for \$399.96 and a \$25.00 labour charge by the tenant.

The landlord argued that these two amounts total \$826.59 which leaves a \$9.87 difference. The tenant stated that this was a miscalculation on his part.

The tenant stated that he provided notice to the landlord concerning the electrician's invoice on February 3, 2021 by placing it in the landlord's mailbox. The tenant also stated that he provided notice to the landlord concerning the cost of purchasing the space heaters on January 23, 2021 by placing it in the landlord's mailbox. The tenant stated on both occasions the landlord did not respond.

The landlord argues that no notice was served to him.

The tenant also withheld \$474.69 for the cost of the repair for the front door. The tenant provided testimony that a cost of \$130.21 plus \$50.00 repairing the front door as it was falling off. The tenant also provided testimony that a cost of \$180.00 was incurred for new locks that were purchased on January 23, 2021. The tenant confirmed that there were no invoices/receipts, but gave notice in writing to the landlord on January 23, 2021 by placing the request for emergency repairs in his mailbox.

The landlord argued that no notice was served to him.

The tenant also argues that \$559.73 was spent for emergency repairs for the installation of 8 smoke detectors. The tenant stated that the landlord was notified in writing on February 23, 2021 with a witness. No invoice/receipt was submitted.

The landlord argued that no notice was served to him. The landlord also referenced the tenant's screenshot of the online purchase which shows a delivery in Grand Forks. The landlord also argue that there was already 1 smoke alarm installed on each floor. The landlord stated that one of the invoice/receipts was for a hotel stay.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the undisputed affirmed evidence that the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated March 10, 2021. Both parties confirmed the tenant failed to pay rent of \$838.46 for February 2021 and \$474.69 for March 2021.

The tenant has argued that he had a right to withhold rent under section 33 (5) and (7) of the Act.

Section 33 (5) states in part that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 33(7) also states that 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.

In the first claim by the tenant that the amounts \$401.63 for the electricians emergency service and \$424.96 for the cost of 4 space heaters, the tenant relies upon the order authorizing the tenant to seek reimbursement if the landlord failed to turn on the heat by 5:30pm on the date of that hearing. The tenant has argued that the heat was not turned on while the landlord has argued that he confirmed with the other tenant that the heat was on. Both parties have referenced the technicians incident report. The landlord has argued that there is no mention of heat being an issue, while the tenant argued that the heat is provided through the electrical systems. A detailed review of the incident report was made and that the technician noted that the tenant's primary concern was

...His main concern was the lights and plug that were out as well as the safety of the electrical throughout the house...

I find in the absence of any further evidence that the tenant's claim that the technician's emergency service was not related to the Arbitrator's decision to allow the tenant to engage a technician for the heat.

I also note that the tenant failed to provide sufficient evidence that a notice to the landlord dated February 3, 2021 regarding the emergency service and the purchase of the 4 space heaters was given to the landlord. The landlord disputed this claim. I also note that the amounts provided by the tenant do not calculate to those amounts owed for unpaid rent for February 2021.

On the remaining unpaid rent for March 2021 of \$474.69. the tenant has again argued that he served notice of emergency repairs regarding the front door (\$130.21 + \$50) and the rear locks (\$180.00) and \$559.73 for 8 smoke detectors totals only \$919.93. The landlord has disputed the tenant's claim stating that no notice of these emergency costs were given to the landlord. The tenant again was not able to provide any actual

invoice/receipts but relied upon a screen shot of an online purchase with a address in Grand Forks.

I find based upon all of the evidence presented that the tenant did fail to pay rent as claimed by the landlord.

On the tenant's claim under section 33 (5) and (7), I find that on a balance of probabilities that the tenant called for emergency electrical service as per the submitted incident report for work on the electrical systems. A detailed review does not mention the heat. The incident report specially mentions the tenant's main concern were the lights and plugs. I find that the tenant failed to provide sufficient evidence of this emergency costs.

On the remaining emergency costs claimed by the tenant to withhold a portion of the monthly rent as claimed by the landlord, I find has also failed. Under section 33 (5) the tenant must provide to the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. The landlord has disputed that no such account was provided. The tenant was not able to provide any proof of service of this written account.

Section 26 (1) of the Act states that 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.

I find that the tenant has failed to provide sufficient evidence under section 33 (5) and (7) that he was lawfully authorized to withhold rent. The 10 Day Notice dated March 10, 2021 is upheld. The tenant's application is dismissed without leave to reapply. The landlord is granted an order of possession under section 55 of the Act to be effective 2 days after it is served upon the tenant.

Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia 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: September 13, 2021

Residential Tenancy Branch