Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **TT: CNR MNRT**
LL: OPR-DR

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "Act"). **One of the tenants** ~~The Tenant~~ made an application for:

- cancellation of a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 5, 2021 (the "10 Day Notice") pursuant to section 49; and
- a monetary order for the cost of emergency repairs to the rental unit in the amount of $2,000.00 pursuant to section 33.

The Landlord made an application **naming both tenants as respondents** for:

- an order of possession for non-payment of rent pursuant to sections 46 and 55; and
- a monetary order for unpaid rent in the amount of $2,400.00 pursuant to section 67.

The Landlord's agent ("JA"), **and the two** ~~the~~ tenant**s** ~~and the Tenant's husband~~ **(individually "LP" and "PP" and collectively the "Tenants"**) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

JA testified the Landlord served **LP** ~~the Tenant~~ in-person with the Notice of Dispute Resolution Proceeding and the Landlord's evidence ("**Landlord's** NOH Package") on September 30, 2021. JA submitted a Proof of Service on Form RTB-34 to corroborate

her testimony. I find that **LP** ~~the Tenant~~ was served with the **Landlord's** NOH Package pursuant to sections 88 and 89 of the Act. **I find PP, who attended the hearing, to be sufficiently served with the Landlord's NOH Package pursuant to section 71(2)(b) of the Act.**

Preliminary Matter – Service of Tenant's Notice of Dispute Resolution Proceeding

When I asked **LP** ~~the Tenant~~ how she served **her** ~~the~~ Notice of Dispute Resolution Proceeding ("Tenant's NOH") on the Landlord, ~~LP~~ ~~the Tenant~~ stated that she did not serve it on the Landlord. I pointed out that the email that was sent to her by the Residential Tenancy Branch, to which the Tenant's NOH was attached, clearly instructed her to serve the Tenant's NOH on the Landlord no later than August 27, 2021. **LP's** ~~The Tenant's~~ response to my question was vague on why she did not serve the Landlord in accordance with those instructions other than to say she was unaware she was required to serve the Tenant's NOH on the Landlord.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure states:

> **3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package**
>
> The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:
>
> a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
> b) the Respondent Instructions for Dispute Resolution;
> c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
> d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

As stated in Rule 3.1, **LP** ~~the Tenant~~ must serve the Landlord with, among other things, the Tenant's NOH. As **LP** ~~the Tenant~~ did not serve the Tenant's NOH on the Landlord, the Landlord did not know that **LP** ~~the Tenant~~ was making any claims against the Landlord or disputing the 10 Day Notice. In the absence of such knowledge, the Landlord was unable to respond to **LP's** ~~the Tenant's~~ claims set out in the Tenant's NOH. The principles of natural justice require that a party be informed of the claims being made against the respondent so that the respondent may respond to those claims and submit any evidence they consider relevant in advance of the hearing.

I considered whether an adjournment would be appropriate to allow the Tenant to serve the Tenant's NOH on the Landlord. Rules 7.8 and 7.9 of the RoP state:

7.8 Adjournment after the dispute resolution hearing begins

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time. A party or a party's agent may request that a hearing be adjourned. The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

LP ~~The Tenant~~ stated she did not serve the Tenant's NOH on the Landlord because she did not know she was required to serve it on the Landlord. However, the

instructions in the email sent to **LP** ~~the Tenant~~ with the Tenant's NOH clearly stated that she was to serve the Tenant's NOH on the Landlord. I find that any need for an adjournment of the hearing to allow the Tenant to serve the Tenant's NOH arises out of the intentional actions or neglect of **LP** ~~the Tenant~~. I also find that an adjournment of the hearing would result in prejudice to the Landlord who has waited to have its own application heard. Furthermore, to allow an adjournment of the hearing, where an applicant for dispute resolution has not complied with the instructions from the RTB regarding service of the notice of dispute resolution proceeding on the respondent, would encourage other applicants to withhold service of the notice on a respondent so that the applicant could attempt to seek an adjournment of the hearing with purpose of delaying the adjudication of the claims of the parties by the arbitrator. I find that **LP** ~~the Tenant~~ has failed to comply with Rule 3.1 and that an adjournment of the hearing is not appropriate in these circumstances. Based on the foregoing, I dismiss **LP's** ~~the Tenant's~~ application in its entirety.

Preliminary Issue – Amendment of Landlord's Monetary Claim

JA testified the Tenant**s** had $50.00 in rental arrears for July 2021 and rental arrears of $850.00 for August 2021. JA stated the Landlord was seeking an amendment to the monetary claim to include unpaid rent for September to December 2021 inclusive that JA stated the Tenant**s have** ~~has~~ not paid.

Rule of Procedure 4.2 states:

> **4.2 Amending an application at the hearing**
>
> In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.
>
> If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the Landlord is seeking compensation for unpaid rent that has increased since the date of the 10 Day Notice. I find that the increase in the Landlord's monetary claim should have been reasonably anticipated by the Tenant**s**. Therefore, pursuant to Rule 4.2, I order that the Landlord's application be amended to include a claim for the months of September to December 2021 rent for a total of $10,300.00.

Issues to be Decided

Is the Landlord entitled to:

- an order of Possession?
- A monetary order for $10,300.00?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed the tenancy commenced on June 1, 2018 for a fixed term ending May 31, 2021 and continuing, on a month-to-month basis, with rent of $2,295.00 payable on the 1st of each month. The rent is now $2,350.00 per month. The Tenant**s** confirmed the terms of the tenancy agreement and that the current rent is $2,350.00 per month

The parties also agreed the Tenant**s** paid the Landlord a security deposit of $1,147.50 and a pet damage deposit of $500.00. The Landlord is holding the deposits in trust for the Tenant**s**.

JA testified the 10 Day Notice was served on the Tenant**s** in-person on August 5, 2021. The Tenant**s** confirmed receiving the 10 Day Notice. I find that the 10 Day Notice was served on of the Tenant**s** in accordance with section 89 of the Act.

The Landlord testified that the Tenant is in arrears as follows:

Date	Owed	Paid	Balance
July 31, 21	$50.00		$50.00
01-Aug-21	$2,350.00		$2,400.00
20-Aug-21		$500.00	$1,900.00
23-Aug-21		$1,00.00	$900.00
01-Sep-21	$2,350.00		$3,250.00
01-Oct-21	$2,350.00		$5,600.00
01-Nov-21	$2,350.00		$7,950.00
01-Dec-21	$2,350.00		$10,300.00
Total	**$11,750.00**	**$1,500.00**	**$10,300.00**

The Landlord testified the Tenant**s were** ~~was~~ given receipts for the two payments made by the Tenant in August which were endorsed with the notation "Does not reinstate tenancy". The Landlord submitted copies of the receipts to corroborate his testimony.

The Tenant**s** testified **they** ~~she and PP~~ had performed emergency repairs to the lower bathroom as there was mold. **LP** ~~She~~ stated that the Landlord had agreed to pay for the repairs and that she was owed $2,000.00 by the Landlord for performing the repairs. **LP** ~~The Tenant~~ submitted she was entitled to apply the costs of those repairs from the rent owing for August 2021. The Tenant**s** did not provide any evidence that the repairs performed were urgent or that **they** ~~she~~ had contacted the Landlord advising that emergency repairs were required or provide any receipts to corroborate that the repairs had been performed.

The Landlord denied the Tenant**s** had even given him notice that emergency repairs were required. The Landlord testified he consented to the Tenant**s** performing alterations on a bathroom. However, the Landlord stated that the work the Tenant**s** **were** ~~was~~ referring to were modifications the Tenant**s** wanted to make to accommodate the needs of a family member of the Tenant**s**. The Landlord denied that he had ever agreed to pay the Tenant**s** for the cost of those modifications.

LP ~~The Tenant~~ also stated the Landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 27, 2021 (the "2 Month Notice") and, as a result, **LP** ~~she~~ was entitled to deduct the equivalent of one month's rent from the rent owing for August 2021.

Analysis

As I have dismissed **LP's** ~~the Tenant's~~ application, I must now consider whether the Landlord is entitled to an Order of Possession and recovery of unpaid rent. Section 26 of the Act states:

> **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.

The Act provides very limited and specific circumstances when a tenant may withhold rent such as: (i) where a tenant has overpaid a security deposit and/or pet damage deposit; (ii) where a tenant has previously overpaid the rent; (iii) where authorization has been given by the landlord or an arbitrator or; (iv) where the landlord does not reimburse the tenant for emergency repairs that have been made by the tenant.

LP ~~The Tenant~~ testified she was entitled to deduct the equivalent of one-month's rent from the rent owing for August 2021 because the Landlord served **the Tenants** ~~her~~ with the 2 Month Notice. The effective date of the 2 Month Notice was September 30, 2021 and, therefore, the last month of the 2 Month Notice was September 2021. Subsections 51.4(1) and 51.4(2) state:

> **51.4**(1) A tenant who receives an order ending a tenancy under section 49.2 *[director's orders: renovations or repairs]* is entitled to receive from the landlord on or before the effective date of the director's order an amount that is the equivalent of one month's rent payable under the tenancy agreement.
>
> (2) *A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*
>
> [emphasis added in italics]

The Tenant**s'** entitlement to receiving compensation or the last month rent free is dependent upon there being no breach of the tenancy agreement by the Tenant**s** at the time the entitlement to compensation or, alternatively, the last month rent free arose. **LP** ~~The Tenant~~ claims **the Tenants were** ~~she was~~ entitled to apply the entitlement to one-

month rent free pursuant to section 51.4(1) to the 1st month of the two-month notice period following service of the 2 Month Notice. Section 51.4(2) states that the tenant may withhold the amount authorized from the last month's rent and that, for the purposes of section 50(2), that amount is deemed to have been paid to the landlord. In the present circumstances, the Tenant is also disallowed from withholding the rent for August 2021 based on section 51.4(2).

The Tenant**s** stated **they** ~~she~~ performed emergency repairs to a bathroom in the rental unit as there was mold and that she was entitled to deduct $2,000.00 from the rent for August 1, 2021. The Landlord testified that the work performed by the Tenant**s** in the rental unit were modifications performed by the Tenant**s** for the benefit of a family member of the Tenant**s**. The Landlord stated he had given the Tenant**s** permission to perform the modifications in the bathroom but those modifications were to be paid for by the Tenant**s** and not he Landlord. Sections 33(1), 33(3) and 33(5) of the Act state:

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

(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.

The Tenant**s** did not provide any evidence that the repairs she performed were urgent or provide receipts for the $2,000.00 or provide evidence that the Landlord had agreed to pay for the repairs. I find that these repairs were not emergency repairs as defined in section 31(1) of the Act. Accordingly, I find the Tenant**s were** ~~was~~ not entitled to deduct, pursuant to section 33(5) of the Act, the costs of the repairs that the Tenant**s** claim~~s~~ **they** ~~she~~ made to the rental unit. For the purposes of this decision, it is unnecessary for me to determine whether the work performed by the Tenant**s** on the bathroom were repairs or modifications to the renal unit and whether the Tenant**s** or Landlord is responsible for the costs of those repairs or modifications.

Sections 55(1) and 55(1.1) state:

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.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 *[landlord's notice: non-payment of rent]*, and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements of section 52(1) of the Act, I find the requirements of sections 55(1) and 55(1.1) have been satisfied.

I accept the Landlord's testimony the Tenant**s** owed $2,400.00 for rental arrears as of August 1, 2021. I find the Tenant**s were** ~~was~~ not entitled to make any deductions from the rent payable to the Landlord. As such, I find the 10 Day Notice was issued for a valid reason. I also accept the Landlord's testimony the Tenant**s** owe~~s~~ the Landlord a total of $10,300.00 for unpaid rent for the period from July through to December 2021 inclusive. As such, I find that the Tenant**s are** ~~is~~ $10,300.00 in total arrears as calculated above. The Tenant**s** must compensate the Landlord this amount.

Based on the above, I order that the Tenant**s** provide the Landlord with vacant possession of the rental unit pursuant to section 55(1) of the Act. I also order the Tenant**s** to pay the Landlord $14,300.00 in satisfaction of the rental arrears owed pursuant to section 55(1.1) of the Act.

Pursuant to section 72(2) of the Act, the Landlord may retain the security deposit and pet damage deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to section 55(1) of the Act, I order that the Tenant**s** deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached orders by the Landlord.

Pursuant to section 55(1.1) of the Act, I order that the Tenant**s** pay the Landlord $8,652.50, representing the following:

Description	Amount
Rental Arrears	$10,300.00
Security Deposit Credit	-$1,147.50
Pet Damage Deposit	-$500.00
Total	**$8,652.50**

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: December 23, 2021

Residential Tenancy Branch

THIS DECISION WAS CORRECTED PURSUANT TO SECTION 78(1)(a) OF THE RESIDENTIAL TENANCY ACT ON JANUARY 10, 2022 AT THE PLACE INDICATED IN STRIKETHROUGH ABOVE