



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 convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent, for a monetary Order for the cost of emergency repairs, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that his lawyer served the Dispute Resolution Package to the Landlord on his behalf, however he does not know how or when the documents were served to the Landlord. The Landlord stated that he did not receive a Dispute Resolution Package related to these proceedings.

I find that the Tenant failed to establish that the Dispute Resolution Package was served to the Landlord in accordance with section 89 of the *Residential Tenancy Act (Act)*. In reaching this conclusion I was heavily influenced by the absence of any evidence to establish how/when the documents were served to the Landlord and by the Landlord's testimony that the documents were not received.

The Landlord stated that he became aware of these proceedings after he contacted the Residential Tenancy Branch to determine if the Tenant disputed the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of these proceedings. The Landlord stated that the Residential Tenancy Branch provided him with the information needed to join the teleconference, but they did not provide him with documents related to the Application for Dispute Resolution.

At the hearing the Landlord was advised that the Tenant had applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord stated that he is prepared to respond to the application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of these proceedings. As the Landlord is prepared to respond to the application to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find it reasonable to consider that matter today.

As the Tenant failed to establish that the Dispute Resolution Package was served to the Landlord in accordance with section 89 of the *Act*, I decline to consider the Tenant's application for a monetary Order for for the cost of emergency repairs and his application to recover the fee for filing the Application for Dispute Resolution. The Tenant retains the right to file another Application for Dispute Resolution in which he applies for a monetary Order for for the cost of emergency repairs.

The Tenant submitted a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of these proceedings. The Tenant stated that he does not know if this evidence was served to the Landlord. The Landlord stated that this evidence was not served to him, although he has a copy of it in his possession. The Landlord agreed that I could consider this document as evidence, as he has a copy of it. With the consent of the Landlord. This document was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- The tenancy began in 2014;
- Rent was due by the first day of each month;
- Prior to August 01, 2020 monthly rent was \$2,150.00;
- The parties verbally agreed that monthly rent would increase to \$2,200.00, effective August 01, 2020;
- There is no written agreement to increase the rent;

- The Tenant was not given written notice of the rent increase;
- The Tenant only paid \$1,250.00 in rent for May of 2021;
- The Tenant has paid no rent for any period after June 01, 2021; and
- The Tenant is still living in the rental unit.

The Tenant stated that his rent has not been paid because he has a “no contact order” which prohibits him from having direct or indirect contact with the Landlord. He stated that his lawyer advised him that he should not pay rent to the Landlord as that could be a breach of his “no contact order”.

The Tenant stated that his lawyer has sent emails to the Landlord in an attempt to pay rent on behalf of the Tenant, but the Landlord has not responded to his lawyer’s communications. The Landlord stated that a lawyer representing the Tenant has not contacted him for the purposes of paying rent for the Tenant.

The Landlord stated that the Tenant paid the increased rent of \$2,200.00 for August, September, October, November, and December of 2020, and for January, February, March, and April of 2021. The Tenant stated that he does not know how often he paid the increased rent of \$2,200.00 but he believes he paid it for “about six months”.

The Tenant stated that he does not have authority from the Residential Tenancy Branch to reduce his rent by any amount. He stated that he made emergency repairs to the rental unit, however he did not provide the Landlord with receipts for those repairs.

The Landlord stated that on January 14, 2022 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was sent to the Tenant, via registered mail. The Tenant stated that he is not certain how the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served to him but “it must have been” served by registered mail. The parties agree that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 14, 2022, declared that the rental unit must be vacated by January 31, 2022.

Analysis

On the basis of the undisputed evidence, I find that the Tenant was required to pay monthly rent of \$2,150.00 by the first day of each month.

Section 42(1) of the *Act* reads:

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

On the basis of the undisputed evidence, I find that the Landlord did not give the Tenant proper written notice that the rent would be increased from \$2,150.00 to \$2,200.00. I therefore find that the Landlord did not have the right to impose a rent increase of \$50.00 pursuant to section 42 of the *Act*.

Section 43 of the *Act* reads:

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

On the basis of the undisputed evidence, I find that the Landlord and the Tenant did not agree, in writing, to increase the rent from \$2,150.00 to \$2,200.00. I therefore find that

the Landlord did not have the right to impose a rent increase of \$50.00 pursuant to section 43 of the *Act*.

On the basis of the testimony of the Landlord, I find that the Tenant paid rent of \$2,200.00 for August, September, October, November, and December of 2020, and for January, February, March, and April of 2021. I find the Landlord's testimony more reliable than the Tenant's testimony in regard to how often the increased rent was paid, as the Tenant has no clear recollection of when he paid the increased rent.

As the Landlord did not have the right to increase the rent from \$2,150.00 to \$2,200.00, I find that the Landlord collected unauthorized rent increases totalling \$450.00 for the period between August 01, 2020 and April 30, 2021. Pursuant to section 43(5) of the *Act*, I find that the Tenant has the right to recover this overpayment by deducting it from any rent due to the Landlord.

Section 26(1) of the *Act* requires a tenant to pay rent when it 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 Tenant submitted no evidence to show that has an Order from the Residential Tenancy Branch allowing him to withhold rent.

Section 33 of the *Act* reads:

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.

(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.

(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.

(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.

Even if I accepted the Tenant's testimony that he made emergency repairs to the rental unit, I would conclude that the Tenant did not have the right to withhold rent as a result of those repairs, pursuant to section 33(7) of the *Act*, as the Tenant acknowledges that he did not provide the Landlord with receipts for those repairs, which is required by section 33(5)(b) of the *Act*.

As the Tenant has failed to establish that he had the right to withhold rent, I find that he remained obligated pay rent in accordance with section 26 of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant paid \$1,250.00 in rent for May of 2021. I therefore find that he still owes \$900.00 in rent for that month. I find that

the \$450.00 due to the Tenant for rent overpayments, pursuant to section 43(5) of the *Act*, should be applied to the rent due for May of 2021, leaving a balance of \$450.00 owing for May of 2021.

On the basis of the undisputed evidence, I find that the Tenant has not paid rent for any period after June 01, 2021.

Section 46(1) of the *Act* permits a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice. On the basis of the undisputed evidence, I find that on January 14, 2022, the Landlord sent the Tenant a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. As the Tenant had not paid all of the rent that was due by January 14, 2022, I find that the Landlord had the right to end the tenancy pursuant to section 46(1) of the *Act* and that the Landlord served the Tenant with proper notice of his intent to do so.

Section 46(4)(a) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. As the Tenant has not paid all of the rent that was due by January 14, 2022, I find that this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities remains in full force and effect. I therefore dismiss the Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

In adjudicating this matter, I have placed no weight on the Tenant's submission that its lawyer has sent emails to the Landlord in an attempt to pay rent on behalf of the Tenant, to which the Landlord has not responded. I have placed no weight on this submission as the Landlord denies the submission and the Tenant submitted no evidence, such as a copy of an email, that corroborates the submission.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and I am satisfied that the Notice to End Tenancy complies

with section 52 of the *Act*, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Section 55(1.1) of the *Act* stipulates that if a tenant applies to dispute a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities the director must grant to the landlord an order requiring the payment of the unpaid rent if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I must grant the Landlord an monetary Order, pursuant to section 55(1.1) of the *Act*, for all rent that is currently due.

On the basis of my conclusion that rent remains at \$2,150.00 and the undisputed evidence that the Tenant has not paid any rent for the period after June 01, 2021, I find that the Tenant currently owes the Landlord \$21,500 in rent for the period between June 01, 2021 and March 31, 2022.

On basis of the undisputed evidence that the Tenant has not paid any rent for the April of 2022, I find that the Tenant must pay per diem rent of \$1,791.75 for the period between April 01, 2022 and April 25, 2022.

I am unable to award compensation for rent for any period after April 25, 2022, as it is possible the Tenant will vacate the rental today. In the event the Tenant does not vacate the rental unit on April 25, 2022, the Landlord retains the right to file an Application for Dispute Resolution seeking compensation for additional rent/lost revenue.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I grant the Landlord a monetary Order of \$23,741.75, which includes \$450.00 in rent for May of 2021, \$21,500.00 in rent for the period between June 01, 2021 and March 31, 2022, and \$1,791.75 in rent for the period between April 01, 2022 and April 25, 2022. In

the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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 *Act*.

Dated: April 25, 2022

Residential Tenancy Branch