Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **TT: CNR MNRT MNDCT RR PSF OLC**
LL: OPR-DR MNR-DR FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the "Act"). The Tenants made one application ("Tenants' Application") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated July 1, 2022 ("10 Day Notice") pursuant to section 46;
- an order to be paid back by the Landlord for the cost of emergency repairs made by the Tenants pursuant to section 33(5);
- an order to seek monetary compensation from the Landlord pursuant to section 67;
- an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord pursuant to section 65;
- an order for the Landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 65; and
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* ("Regulations") and/or tenancy agreement pursuant to section 62.

The Landlord made one application ("Landlord's Application") for:

- an Order of Possession pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent under sections 55 and 67; and
- authorization to recover the filing fee of the Landlord's application from the Tenants pursuant to section 72.

The Landlord and the two Tenants ("BP" and "MB") attended this hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Landlord stated he served his Notice of Dispute Resolution Proceeding ("Landlord's NDRP") on each Tenant person on July 1, 2022. The Tenants acknowledged they received the Landlord's NDRP. I find each of the Tenants were served with the NDRP pursuant to section 89 of the Act.

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

BP stated the Tenants served their Notice of Dispute Resolution Proceeding ("Tenants' NDRP") on the Landlord's door on July 23, 2022. The Landlord acknowledged he received the Tenant's NDRP.

Section 89(1) of the Act states:

> 89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
>
> (a) by leaving a copy with the person;
>
> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
>
> (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
>
> (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
>
> (f) by any other means of service provided for in the regulations.

The Tenants' NDRP is a document that must be served on the Landlord pursuant to section 89(1) of the Act. The Tenants served the Tenants' NDRP on the Landlord's door. As such, the Tenants used a method of service not permitted by section 89(1) of the Act. However, the Landlord acknowledged he received the Tenants' NDRP and, therefore, I find the Landlord was sufficiently served pursuant to the provisions of section 71(2)(b) of the Act.

BP stated the Tenants served their evidence in the Landlord's mailbox on November 13, 2022. Section 88 of the Act states:

> 88 All documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
>
> (a) by leaving a copy with the person;
>
> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
>
> (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
>
> (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
>
> (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
>
> (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
>
> (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
>
> (i) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;
>
> (j) by any other means of service provided for in the regulations.

BP stated the Tenants served their evidence in the Landlord's mailbox. This is method of service for documents (including evidence), other than a notice of dispute resolution proceeding, permitted by section 88 of the Act. The Landlord acknowledged he received the Tenant's evidence on his door. As such, I find the Tenants' evidence was served on the Landlord in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Service of Landlord's Evidence on Tenants

The Landlord stated he served his evidence on the Tenant's door on November 13, 2022. BP and MB denied they received the Landlord's evidence. When I asked, the Landlord stated he did not have a witness with him at the time he served his evidence on the Tenants' door.

Rule 3.15 of the RoP states:

> **3.15 Respondent's evidence provided in single package**
>
> Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.
>
> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.
>
> See also Rules 3.7 and 3.10.

The Tenants both stated they did not receive the Landlord's evidence. The Landlord did not provide any evidence to corroborate his testimony that he served his evidence on the Tenants' door. As such, I find, on a balance of probabilities, that the Tenants were not served with the Landlord's evidence. As the Tenants did not submit a complete copy of the 10 Day Notice as required by Rule 2.5 of the RoP, I will admit the copy of the 10 Day Notice submitted by the Landlord into evidence. However, I will not admit the other evidence submitted by the Landlord for this proceeding.

Preliminary Matter – Landlord and Tenants Made Applications under Wrong Legislation

At the outset of the hearing, I noted that the Landlord made the Landlord's Application, and the Tenants made the Tenants' Application pursuant to the *Residential Tenancy Act*. However, I inferred from the information that the Landlord and Tenants provided in their respective applications was the Tenants were living in an RV parked on the

Landlord's residential property. The Tenants confirmed they owned the RV and that it was parked on the Landlord's residential property. There was no evidence the tenancy arrangement was for a short-term or recreational stay. Both the Tenants and Landlord requested that I amend their respective applications to indicate they were brought under the *Manufactured Home Park Tenancy Act.*

Rule 4.2 of the RoP 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.

It was clear that the parties had made their respective applications under the wrong legislation and they both sought an amendment to their applications to change them from being brought under the *Residential Tenancy Act* to being brought under the *Manufactured Home Park Tenancy Act.* As such, I order the Tenants' Application and the Landlord's Application to have been brought under the *Manufactured Home Park Tenancy Act*

Preliminary Matter – Severance and Dismissal of Tenants' Claims

At the outset of the hearing, I observed the Tenants' Application included claims for (i) an order to seek monetary compensation from the Landlord; (ii) an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord; (iii) an order for the Landlord to provide services or facilities required by the tenancy agreement or law; and (iv) an order for the Landlord to comply with the Act, Regulations and/or tenancy agreement (collectively the "Tenants' Other Claims").

Rule 2.3 of the Rules states:

> 2.3 **Related issues**
>
> Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch ("RTB") are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

This hearing was scheduled for one hour. At the outset of the hearing, I advised the parties the primary issue in the Tenants' Application was whether the tenancy would continue or end based on the 10 Day Notice and whether the Tenants were entitled to be reimbursed by the Landlord for emergency repairs. Accordingly, I find the Tenants' Other Claims were not sufficiently related to the primary issues of whether the 10 Day Notice would be cancelled and whether the Tenants were entitled to be reimbursed by the Landlord for emergency repairs. Based on the above, I will dismiss the Tenants' Other Claims, with or without leave, depending upon whether I cancel the 10 Day Notice.

Issues to be Decided

- Are the Tenants entitled to cancellation of the 10 Day Notice?
- If the Tenants are not entitled to cancellation of the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act and a monetary order for unpaid rent pursuant to section 55(1.1) of the Act?
- Is the Landlord entitled to reimbursement of the filing fee for the Application from the Tenants?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenants' Application and Landlord's Application are set out below.

The parties agreed there was no written tenancy agreement. The parties agreed the tenancy commenced on May 1, 2022 with rent of $700.00 payable on the 1st day of each month.

The Landlord stated he served the 10 Day Notice on MB in-person on July 2, 2022. The Tenants acknowledged they received the 10 Day Notice. I find the 10 Day Notice was served on the Tenants pursuant to the provisions of section 88 of the Act.

The 10 Day Notice stated the Tenants had rental arrears totaling $1,300.00 as of July 1, 2022. The Landlord stated the Tenants now have rental arrears of $4,100.00 that have accrued from June through November 2022 inclusive, calculated as follows:

Date	Rent Owed	Paid	Balance
June 1, 2022	$700.00	$0.00	$700.00
June 7, 2022		$100.00	$600.00
July 1, 2022	$700.00	$0.00	$1,300.00
August 1, 2022	$700.00	$0.00	$2,000.00
September 1, 2022	$700.00	$0.00	$2,700.00
October 1, 2022	$700.00	$0.00	$3,400.00
November 1, 2022	$700.00	$0.00	$4,100.00
Total:	**$4,200.00**	**$100.00**	**$4,100.00**

BP acknowledged the Tenants paid only $100.00 for the rent owing for June 2022 and have not paid any rent since that time. BP stated the Tenants drove their RV to the side of the Landlord's house and he required that they back the RV down to the bottom of the driveway. BP stated the Tenants' RV sustained significant damage when they backed the RV down to the bottom of the driveway. BP stated the Landlord did not provide an adequate electrical supply and it was necessary for them to obtain a generator to power the RV. BP also stated that they required water as the water pump in the RV would not work while they were without power. BP stated the Tenants were seeking reimbursement to make emergency repairs calculated as follows:

Nature of Emergency Repair	Amount
Champion Generator	$354.18
Gas Can	$25.30
Water Jug	$17.20
25 Foot Extension Cord	$30.65
Total:	**$427.33**

When I asked, BP stated the Tenants let the Landlord know they required repairs by text but they did not attempt to call the Landlord by telephone on at least two times to request the Landlord perform emergency repairs to the electrical system. BP did not submit any evidence to indicate the power outlet at the pool house was not working.

The Landlord stated he told the Tenants that they were to park their RV at the bottom of the driveway. The Landlord stated the agreement with the Tenants was for them to use the 120-volt electrical supply outlet that was located on the side of the pool house of the residential property. The Landlord stated he provided the electrical cabling to the Tenants to run from the pool house to their RV.

Analysis

1. Order of Possession

Sections 46 and 53 of the Act state:

46(1) A landlord may 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 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

The 10 Day Notice was served on the Tenants in person on July 2, 2022. Pursuant to section 46(4), the Tenants had 5-days, or until July 7, 2022, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB indicate the Tenants' Application was filed on July 7, 2022. As such, I find the Tenants' Application was filed within the 5-day dispute period required by section 46(4) of the Act

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.

Pursuant to s. 26(1) of the Act, a tenant must pay rent when it is due whether the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the Act grants the tenant the right to deduct all or a portion of the rent. The Act stipulates a set of limited circumstances in which monies claimed by a tenant can be deducted from rent, which include:

1. where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2));
2. the reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8));
3. where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)); and
4. as ordered by the Director pursuant to sections 65 and 72.

Section 33 states:

> 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.

[emphasis in italics added]

BP stated that the electrical supply to the Tenants' RV was insufficient. BP stated the Tenants purchased a generator and electrical cabling to power the RV, purchased a gas can to transport gasoline for the generator and a water bottle to transport water as the water pump for the RV would not work while there was no power to the RV. BP stated the Tenants sent text messages to the Landlord but did not telephone him at all to advise the Landlord that they required emergency repairs. It is unnecessary for me to determine whether the Landlord items claimed by the Tenants constitute "emergency repairs" as that expression is used in section 33(1) of the Act. BP admitted the Tenants did not make at least two telephone calls to the Landlord to request emergency repairs. I find the Tenants did not comply with the requirements of section 33(3)(b) of the Act. As such, I find the Tenants are not entitled to reimbursement of the costs of any of the emergency repairs they have claimed for pursuant to section 33(6)(a) of the Act. Based on the foregoing, I dismiss the Tenants' claim for reimbursement for the expenses of any emergency repairs they have claimed for in the Tenants' Application.

As I have dismissed the Tenants' claim for reimbursement for emergency repairs, I find that none of the circumstances listed above that permit a Tenant to withhold rent are presently applicable. The Act is unequivocal that the obligation to pay rent rests solely with the Tenants. BP admitted the Tenants only paid $100.00 for rent for June 2022 and have not paid any rent since that time. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the Tenants had rental arrears of $1,300.00 as of July 1, 2022. As such, I find there was a valid reason for the Landlord serving the Tenants with the 10 Day Notice. Based on the above, I find there is no basis upon which to cancel the 10 Day Notice. Accordingly, the Tenants' claim for cancellation of the 10 Day Notice is dismissed. As I have now dismissed all the Tenant's claims set out in the Tenant's Application, I dismiss the Tenants' Application in its entirety.

Sections 55(1) and 55(1.1) of the Act 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 that it complies with the form and content requirements of section 52 of the Act. Section 55(1) of the Act provides that, where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, then I must grant the landlord an Order of Possession. The parties agreed the Tenants have not vacated the rental unit. As such, pursuant to section 55(1) of the Act, I must grant the Landlord an Order of Possession for the rental unit. Pursuant to section 68(2)(a), I find the tenancy ended on November 28, 2022.

2. Monetary Order for Unpaid Rent

I find that, pursuant to section 26(1) of the Act, the Tenants have rental arrears of $4,100.00 for the months of June through November 2022 inclusive. The Tenants must compensate the Landlord this amount. Pursuant to section 55(1.1) of the Act, if a tenant's application is in relation to non-payment of rent and the application is dismissed, then the director must grant an order requiring payment of the unpaid rent. As such, pursuant to section 55(1.1) of the Act, I must order the Tenants pay the Landlord $4,100.00 in satisfaction of the rental arrears.

3. Filing Fee of Application

As the Landlord has been successful in the Landlord's Application, pursuant to section 72 of the Act, I award the Landlord $100.00 for the filing fee of the Landlord's Application.

4. Disposition of Tenants' Severed Claims

As noted above, I severed the Tenant's Other Claims from the Tenants' Application. As I have ended the tenancy, the Tenants' claims for an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord and for an order for the Landlord to provide services or facilities required by the tenancy agreement or law are no longer necessary and I dismiss those claims

without leave to reapply. The Tenants' claim for an order to seek monetary compensation from the Landlord is dismissed with leave to reapply. As such, the Tenants have the option of making a new application for dispute resolution to seek monetary compensation from the Landlord.

5. Order for Substituted Service

At the hearing, the Landlord stated the Tenants do not have a fixed address for service of orders on the Tenants but they have a working email address. Pursuant to section 70(1) of the Act, I order the Landlord to serve this decision, Order of Possession and Monetary Order on the Tenants using the email address set out on the first page of this decision.

Conclusion

The Tenants' Application is dismissed in its entirety.

The Tenants are ordered to deliver vacant possession of the home site to the Landlord within two days of being served with a copy of this decision and attached Order by the Landlords. This Order of Possession may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Tenants are ordered to pay the Landlord $13,750.00 representing the following:

Description	Amount
Rental Arrears	$4,100.00
Filing Fee of Landlord's Application	$100.00
Total	**$4,200.00**

It is the Landlord's obligation to serve the Monetary Order on the Tenants. If the Tenants do not comply with the Monetary Order, it may be filed with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The Landlord is ordered to serve this decision, Order of Possession and Monetary Order on the Tenants by email using the email address set out on the first page of this decision.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act.*

Dated: November 30, 2022

Residential Tenancy Branch