



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC, MNRT, DRI, LRE, LAT, OLC, FFT

Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s April 5, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the Act;
- (ii) an order cancelling a One Month Notice to End Tenancy for Cause under section 47 of the Act;
- (iii) a monetary order for the cost of emergency repairs under section 33 of the Act;
- (iv) an order to dispute a rent increase under section 41 of the Act;
- (v) an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70 of the Act;
- (vi) authorization to change the locks to the rental unit under section 31 of the Act;
- (vii) an order for the landlord to comply with the Act under section 62 of the Act; and
- (viii) authorisation to recover the cost of the filing fee under section 72 of the Act.

Preliminary Issue - Unrelated Claims

Rules of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the tenant's claim regarding the (i) Notice; (ii) emergency repairs; (iii) rent increase; and (iv) filing fee is not sufficiently related to the tenant's other claims to warrant that they be heard together. I exercise my discretion to dismiss the tenant's other claims with leave to reapply and will deal only with the (i) Notice; (ii) emergency repairs; (iii) rent increase; and (iv) filing fee.

Issues

1. Is the tenant entitled to an order to reduce rent?
2. Is the tenant entitled to an order cancelling the Notice?
3. If not, is the landlord entitled to an order of possession?
4. Is the tenant entitled to a monetary order for the cost of emergency repairs?
5. Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began October 1, 2018. The landlord currently retains a \$1,500.00 security deposit and a \$300.00 pet damage deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on April 2, 2023, by attaching a copy to the door of the rental unit. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$5,047.50 that was due on April 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that:

- In relation to the rent increase, which raised the rent from \$3,045.00 to \$3,500.00, the landlord never served the tenant with a notice of rent increase.

- In relation to unpaid rent, the tenant is in arrears as follows:
 - the tenant only partially paid the rent in April 2020 and there is \$1,000.00 in unpaid rent relating to this month.
 - the tenant only partially paid the rent in December 2022 and there is \$1,547.50 in unpaid rent relating to this month.
 - the tenant has not paid any rent for April and May 2023.
 - the tenant has unpaid utilities relating to the months of March to May 2023. The landlord submitted as evidence:
 - a bill from BC Hydro (for electricity) for the period from March 22, 2023, to May 2, 2023, showing a total of \$676.64 owing.
 - a bill from Fortis BC (for natural gas) for the period from March 18, 2023, to April 14, 2023, showing a total of \$271.11 owing.

The tenant affirmed that:

- the tenant withheld rent and utility payments to be compensated for emergency repairs that the landlord refused to do. In particular, the tenant had to fix the following issues:
 - A non-functional light switch;
 - Dirty vents requiring cleaning;
 - Inefficient windows, which needed replacing;
 - Clogged sinks;
 - Backyard door not closing properly;
 - Installing a carbon monoxide detector;
 - Washing machine leaking and making loud noises; and
 - Mould in the bathroom tiles.
- The tenant submitted as evidence a text message the tenant sent to the landlord on March 25, 2023, stating the need to fix the above-mentioned issues (other than the mould, which was not mentioned in the text). The landlord had responded to that message by text saying the landlord would not fix any of the mentioned issues.
- The tenant also submitted as evidence an invoice for repairs done on:
 - replacing the door (\$728.00);
 - mold removal (\$5,500.00); and
 - washing machine and pipes (\$1,512.00).

Analysis

Under section 42 of the Act, in order for a rent increase to be valid, a landlord must give a tenant a notice of a rent increase at least 3 months before the effective date of the increase. The notice of a rent increase must be in the approved form.

As the landlord's evidence is that the landlord never served the tenant with a notice of rent increase raising the rent from \$3,045.00 to \$3,500.00, I find that the rent increase is invalid. As a result, the tenant's application to dispute a rent increase is granted. I find that the rent is currently \$3,045.00.

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent. Section 46(1) of the Act allows landlords to end a tenancy with a *10 Day Notice to End Tenancy for Unpaid Rent* on any day rent remains unpaid after the day rent is due.

In relation to unpaid rent, the landlord's evidence is that:

- the tenant only partially paid the rent in April 2020 and there is \$1,000.00 in unpaid rent relating to this month;
- the tenant only partially paid the rent in December 2022 and there is \$1,547.50 in unpaid rent relating to this month;
- the tenant has not paid any rent for April and May 2023.
- the tenant has unpaid utilities relating to the months of March to May 2023. The landlord submitted as evidence:
 - a bill from BC Hydro (for electricity) for the period from March 22, 2023, to May 2, 2023, showing a total of \$676.64 owing.
 - a bill from Fortis BC (for natural gas) for the period from March 18, 2023, to April 14, 2023, showing a total of \$271.11 owing.

The total amount of unpaid rent and utilities based on the above figures is \$9,585.25.

In relation to the unpaid rent, the tenant's evidence is that the tenant withheld rent and utility payments to be compensated for emergency repairs that the landlord refused to do.

Under section 33 of the Act, emergency repairs are defined as repairs that are:

- urgent;
- necessary for the health or safety of anyone or for the preservation or use of residential property; and
- made for the purpose of repairing:
 - major leaks in pipes or the roof;
 - damaged or blocked water or sewer pipes or plumbing fixtures;
 - the primary heating system;
 - damaged or defective locks that give access to a rental unit; or
 - the electrical systems.

In addition, according to Policy Guideline 51, emergency repairs do not include things like repairs to a clothes dryer that has stopped working, mold removal, or pest control.

The tenant's evidence was that the tenant had to fix the following issues:

- A non-functional light switch;
- Dirty vents requiring cleaning;
- Inefficient windows, which needed replacing;
- Clogged sinks;
- Backyard door not closing properly;
- Installing a carbon monoxide detector;
- Washing machine leaking and making loud noises; and
- Mould in the bathroom tiles.

Of the list of repairs carried out by the tenant, I find that the following do not qualify as emergency repairs under section 33 of the Act as they do not relate to major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems:

- Inefficient windows, which needed replacing;
- Installing a carbon monoxide detector; and
- Mould in the bathroom tiles.

In relation to the remaining repairs carried out by the tenant, I find that the following do not qualify as emergency repairs under section 33 of the Act as the tenant has not provided any documentary evidence to show that these repairs were (i) urgent; and (ii) necessary for the health or safety of anyone or for the preservation or use of residential property:

- A non-functional light switch;
- Clogged sinks;
- Washing machine leaking and making loud noises; and
- Dirty vents requiring cleaning.

In relation to the repair done on the backyard door, the tenant had submitted photographic evidence of an old door with a broken lock and evidence of that door being replaced by a new door. I find that a broken backyard door qualifies as an emergency repair under section 33 of the Act as fixing a broken door, which gives access to the rental unit, is (i) urgent; (ii) necessary for the health or safety of anyone or for the preservation or use of residential property; and (iii) made for the purpose of repairing damaged or defective locks that give access to a rental unit.

Under section 33(3) of the Act, a tenant may have emergency repairs made only when all of the following conditions are met:

- emergency repairs are needed;
- 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; and
- following those attempts, the tenant has given the landlord reasonable time to make the repairs.

As mentioned above, I find that fixing a broken backyard door qualifies as an emergency repair. The tenant submitted as evidence a text message the tenant sent to the landlord on March 25, 2023, stating the need to fix the relevant issues. The landlord had responded to that message by saying the landlord would not fix any of the mentioned issues. As the landlord had told the tenant that the landlord would not be fixing any of the issues, including the backyard door, I find that the tenant would not have been required to contact the landlord a second time. In addition, since the landlord informed the tenant that the landlord would not be carrying out those repairs, I also find that the tenant did not need to give the landlord any time to carry out those repairs.

Under section 33(5) of the Act, 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.

The tenant submitted as evidence an invoice for replacing the backyard door totalling \$728.00. As the tenant is claiming reimbursement for this amount from the landlord and has submitted as evidence a written account of the emergency repairs accompanied by a receipt, I find that the tenant is entitled to compensation for emergency repairs totalling \$728.00.

The landlord's evidence shows that the tenant is currently \$9,585.25 in rental arrears representing unpaid rent and utilities. The tenant's evidence shows that the tenant had withheld rent and utility payments in order to be compensated for emergency repairs carried out by the tenant. As mentioned above, of the repairs carried out, the tenant is only entitled to reimbursement for repairing the backyard door for the amount of \$728.00. This still leaves a balance of \$8,857.25 in arrears relating to rent and utilities. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason. I also find that the Notice complies with the form and content requirements of section 52. As a result, the tenant's application to cancel the Notice is dismissed.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenant is ordered to pay \$9,585.25 in unpaid rent to the landlord.

Policy Guideline 17 provides that, where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. Since the landlord is awarded \$9,585.25 for unpaid rent and the tenant is awarded \$728.00 for emergency repairs, I will set-off the awards and order the tenant to pay the landlord \$8,857.25.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$1,500.00 security deposit and the \$300.00 pet damage deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$7,057.25 is attached to this Decision and must be served on the tenant.

As tenant was only partially successful with its application, the tenant is not entitled to recover the cost of the filing fee under section 72 of the Act.

Conclusion

The tenant's application to dispute a rent increase is granted.

The tenant's application for a monetary order for the cost of emergency repairs is partially granted.

The tenant's application to cancel the Notice is dismissed without leave to reapply. The landlord is granted an order of possession and a monetary order in the amount of \$7,057.25.

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: June 09, 2023

Residential Tenancy Branch