

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's June 15, 2023 application and the Landlord's June 27, 2023 application, pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- Cancellation of a 10-Day Notice to End Tenancy for Unpaid Rent pursuant to section 46
- An order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent pursuant to sections 46 and 55
- A monetary order for unpaid rent
- An authorization to recover the filing fee for this application, under section 72

### **Preliminary Matter**

At the outset of the hearing the Landlord sought to increase their monetary claim from \$5,950.00 to \$11,900.00 to reflect the Tenant's failure to pay \$2,975.00 in monthly rent for July and August 2023 rent, the additional month of unpaid rent waiting for this hearing.

*Residential Tenancy Branch Rules of Procedure*, Rule 4.2, states that 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. I allow the amendment as this was clearly rent that the Tenant would have known about and resulted since the Landlord submitted the application.

- LR

The Tenant's application was filed by LR who is an occupant of the rental unit and spouse of the Tenant.

### **Issues to be Decide**

Should the Landlord's 10-Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession and Monetary Order?

Is The Landlord entitled to recover the filing fee for their application?

### Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on August 1, 2022, with a monthly rent of \$2,975.00, due on first day of the month, with a security deposit in the amount of \$1,487.50 and a pet damage deposit in the amount of \$1,487.50

The Landlord served the 10-Day Notice on the Tenant on June 10, 2023 for unpaid rent for May and June 2023. LR have applied to dispute the 10-Day Notice on behalf of the Tenant.

Neither the Tenant nor LR attended the hearing. The Landlord's agent MM (the "Landlord's Agent") argued that the Tenant and LR did not pay rent for May and June 2023 and that is why the 10-Day Notice was issued. After the 10-Day Notice was issued the Tenant and LR continued occupying the rental unit and did not pay rent for July and August 2023. The Landlord's Agent argued that \$11,900 is owed in unpaid rent.

### Analysis

#### **Is the Tenant Entitled to More time to Cancel the Landlord's 10-Day Notice?**

Section 46 of the Act states that upon receipt of a 10-Day Notice, the tenants must, within five days, either pay the full amount of the arrears as indicated on the 10-Day Notice or dispute the 10-Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenants do not pay the arrears or dispute the 10-Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I find that the 10-Day Notice was duly served to the Tenant on June 10, 2023, and that the Tenant had until June 15, 2023, to dispute the 10-Day Notice or to pay the full amount of the arrears.

The Tenants have applied for dispute resolution requesting more time to cancel a notice to end tenancy. LR applied to dispute the 10-Day Notice on June 15, 2023 which is within the 5 day deadline. As such, it is not necessary to decide if the Tenant and LR are entitled to more time to cancel the 10-Day Notice.

**Should the Landlord's 10-Day Notice be cancelled? If not, Is the Landlord entitled to an Order of Possession and Monetary Order?**

Section 46 of the Act states that upon receipt of a 10-Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10-Day Notice or dispute the 10-Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the Tenant do not pay the arrears or dispute the 10-Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

The Tenant and LR did not attend the hearing to present any legal reason for withholding rent.

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Commencement of the hearing:** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

For the above reason the Tenant's application for cancellation of the 10-Day Notice under sections 46 and 55 of the Act is dismissed, without leave to reapply.

**Are the Landlords entitled to an Order of Possession based on a Notice to End Tenancy?**

Section 55(1) of the Act states that if a Tenant makes an application to set aside a Landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the Landlords are entitled to an Order of Possession.

**Is the Landlord entitled to a Monetary Order for unpaid rent?**

Section 55(1.1) of the Act states that if a Tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I find that the 10- Day Notices comply with section 52 of the Act.

Based on the undisputed testimony of the Landlord's Agent, I find that the Tenant and LR did not pay rent from May 2023 to August 2023 and owe \$11,900.00 in unpaid rent.

Pursuant to section 72 of the Act, I authorize the Landlord to retain the security and pet damage deposit of \$2,975.00 in partial satisfaction of the unpaid rent owed.

**Is the Landlord entitled to recover the filing fee for this application from the Tenant?**

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlords **effective two (2) days after service of this Order on the Tenant**. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlords a Monetary Order in the amount of **\$9,025.00** under the following terms:

Monetary Issue	Granted Amount
unpaid rent under section 55 of the Act	\$11,900.00
deduct security and pet damage deposit under section 72 of the Act	- \$2,975.00
recover filing fee under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$9,025.00</b>

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Tenant's application for cancellation of the 10-Day Notice and more time to dispute 10-Day Notice is dismissed, without leave to reapply.

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: August 25, 2023

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Residential Tenancy Branch