

DECISION

Introduction

This hearing dealt with the landlord's June 13, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 46 and 55 of the Act
- an Order of Possession based on a one month Notice to End Tenancy for Cause, not end of employment,
- Unpaid Rent or Utilities (the 10 Day Notice) under sections 47 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for loss or other money owed under section 67 of the Act
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

This hearing also dealt with the tenants' June 2, 2023, Application for Dispute Resolution under the Residential Tenancy Act (the "Act") for:

- disputing a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities
- disputing a One Month Notice to End Tenancy for cause
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

Service of Notice and Evidence

The parties acknowledged service of notice and evidence.

Preliminary Matters

This hearing did not explore the one-month notice to end tenancy that was issued on June 2, 2023. I have removed it as a claim from both applications under Rule of Procedure 4.2 and I do not give leave to re-apply. I also note that the landlord's claim for compensation for "loss or other money owed" was not discussed during the hearing. I therefore dismiss this claim with leave to re-apply.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the 10 Day Notice?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to recover the filing fee for this application from the tenant or is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on or about February 1, 2020. Monthly rent is set at \$1,400.00 and a security deposit in the amount of \$675.00 was collected. A copy of the original written rental agreement was provided by both parties.

The landlord stated that rent has not been paid or received since May 2023. This led them to issue a 10-day notice to end tenancy on June 2, 2023. The notice was served to the tenants' door. The tenant acknowledged service to the door on that day. The tenant agreed that rent was not paid for June 1, 2023, and that no rent payments have been made since the notice was issued. A copy of this notice was provided.

The tenant stated that rent was not paid because they were in the hospital. The tenant did not provide verifiable documentary evidence related to their hospitalization.

Analysis

According to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure, the onus is on the landlord to prove they have a lawful reason to end the tenancy. They are required to satisfy a three-part test that examines the following elements in accordance with the Act:

1. Service of the notice - section 88 and 90 of the Act
2. Specific information recorded on the notice - section 52 of the Act
3. Reason for the notice - section 46 of the Act

I find that this notice was served to the tenants' door on June 2, 2023, because the tenant agreed that it was served on this day.

Regarding specific information recorded on the notice, I find that the notice complies with section 52 of the Act.

Regarding the landlord's reason for issuing this notice, I accept that the tenants have not paid rent since May 2023. Consequently, I accept the landlords' claim that \$1,400.00 was owing when they issued the 10-day notice to end tenancy on June 2, 2023.

Based on the above, I find that the June 2, 2023, notice to end tenancy is valid.

The tenants' application to dispute the 10-day notice to end tenancy is dismissed without leave to re-apply.

Is the landlord entitled to an Order of Possession based on a Notice to End Tenancy?

I find that the landlord is entitled to an Order of Possession that will be effective on August 11, 2023, after it is served on the tenant.

Is the landlord entitled to a Monetary Order for unpaid rent?

As noted above, I found that the notice to end tenancy dated June 2, 2023, is valid and that \$2,800.00 is owing through to July 31, 2023. In accordance with Residential Tenancy Policy Guideline 3, the tenant "liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA". Because I am issuing an order of possession effective August 11, 2023, I find it reasonable that the landlord be awarded rent until the day they retain possession of the rental unit.

$\$1,400.00 \times 12 = \$16,800 / 365 = \$46.03$ for rent per day

$\$46.03 \times 11 = \506.33 for Rent owing for August 1 – 11, 2023

$\$2,800.00 + \$506.33 = \$3,306.33$ total rent owing

Because evidence was also received that the tenants paid a \$675.00 security deposit, the current value of this deposit must be offset against monies owed. According to the online Residential Tenancy Interest Calculator, this deposit is valued at \$682.80 as at the day of the hearing.

I therefore order that the landlord is entitled to retain the full value of this deposit under section 72 of the Act against monies owed. I further order that the landlord is entitled to a monetary order of \$2,623.53 for the balance of unpaid rent.

$\$3,306.33 - \$682.80 = \$2,623.53$

Authorization to Recover Filing Fee

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. Because the tenants were not successful with their application, I find that they must pay their own application fee.

Conclusion

I grant an Order of Possession to the landlord **effective August 11, 2022, after service of this Order on the tenant(s)**. Should the tenant(s) 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 landlord a Monetary Order in the amount of **\$2,723.53** under the following terms:

Monetary Issue	Granted Amount
Unpaid rent under section 55 of the Act	\$3,306.33
Less Current Value of Security Deposit	\$682.80
	\$2,623.53
Plus Authorization for compensation for filing fee	+ \$100.00
Total Amount	\$2,723.53

The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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.

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 4, 2023

Residential Tenancy Branch