

## **DECISION**

### **Introduction**

This hearing was convened under the Residential Tenancy Act (The “Act”) in response to cross applications from the parties.

The Tenant filed their application on June 6, 2023, and seeks the following:

- Cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the “Notice”).
- Repairs to the rental unit.
- An order for the Landlord to comply with the Act, the Residential Tenancy Regulation, or the tenancy agreement.
- To recover the cost of the filing fee.

The Landlord filed their application on June 13, 2023, and seeks the following:

- An order of possession due to unpaid rent and utilities.
- A monetary order for unpaid rent and utilities.
- To recover the cost of the filing fee.

At the start of the hearing, the Landlord testified that they did not receive the Tenant's application or documentary evidence, but they confirmed they were aware of the Tenant's claims as early as July and that they were ready to proceed.

On June 29, 2023, the Landlord’s application and evidence was mailed to the Tenant in accordance with section 89 of the Act, and I deem the Tenant received it on July 4, 2023.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is either the Tenant or the Landlord entitled to recover the application filing fee?
- Is the Landlord required to make repairs?
- Is the Landlord required to comply with the tenancy agreement, Act or Regulation?

### Facts and Analysis

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

The parties agreed to the following regarding the tenancy:

- The tenancy began on January 24<sup>th</sup>, 2023.
- Rent is \$2,800.00 per month, due on the 1<sup>st</sup> day of every month.
- A security deposit of \$1,400.00 was paid by the Tenant to the Landlord, which the Landlord still holds.
- A written tenancy agreement, signed by both parties, and entered as evidence by the Landlord, governs the parties' tenancy relationship (the "Agreement"). The Agreement has an amendment, signed by both parties, dated January 11, 2023, which sets out the Tenant's responsibilities regarding the payment of utilities.
- Pursuant to clause 14 of the Amendment to the Agreement, the Tenant is liable for paying \$50.00 in late fees if the rent remains outstanding 7 days after it became due, with an additional \$20.00 in late fees for each additional day that rent remains outstanding.
- The Agreement shows a second party listed as a tenant, but both parties agreed that this party vacated the rental unit and was replaced by another individual, with the Landlord's permission.
- The Tenant still occupies the rental unit.

The Landlord handed the 10-Day Notice to End Tenancy to the Tenant on June 5th, 2023. The Tenant did not pay the arrears listed on the Notice and filed to dispute on time. Below is the Landlord's undisputed account of unpaid rent and utilities. The Landlord is also claiming \$1,810.00 in late fees. I reviewed the content of the Landlord's application and there was no record of the Landlord informing the Tenant of this monetary claim. It is unfair for me to award the Landlord any monetary amount that has not been disclosed to the Tenant. The Tenant should have an opportunity to dispute the payment of these fees, thus the Landlord will have to file an additional application for compensation for unpaid late fees.

<b>Date</b>	<b>Description</b>	<b>Current Status</b>	<b>Amount</b>
June 1, 2023	Unpaid rent	Outstanding	\$2,800.00
July 1, 2023	Unpaid rent	Outstanding	\$2,800.00
August 1, 2023	Unpaid rent	Outstanding	\$2,800.00

March and April 2023	Hydro	Outstanding	\$35.13
May and June 2023	Hydro	Outstanding	\$49.15
April 2023	Gas	Outstanding	\$80.00
May 2023	Gas	Outstanding	\$34.70
June 2023	Gas	Outstanding	\$21.46
July 2023	Gas	Outstanding	\$14.22
<b>Total outstanding rent and utilities</b>			<b><u>\$8,634.66</u></b>

The Tenant testified that the Landlord's upstairs tenants have been infringing on the Tenant's right of quiet enjoyment and, in the result, the Tenant decided to withhold rent as compensation.

Section 26(1) of the *Act* says:

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.

The Tenant did not identify any lawful reason to deduct any portion of rent. I find that the 10 Day Notice was given for a valid reason under section 46 of the *Act*. I have reviewed the 10 Day Notice and find that it complies with the form and content requirements of section 52 of the *Act*.

The Tenant's application is dismissed, and the Landlord is entitled to an Order of Possession. Section 55(1.1) of the *Act* states that if a Tenant's application is dismissed, I must grant the Landlord a monetary award for the unpaid rent. Late fees are not considered unpaid rent and will not be awarded, but the Landlord may file a separate application to try and recover late fees pursuant to the Agreement.

As stated in the Residential Tenancy Branch's Policy Guideline #6, "a tenant must not deduct any amount of rent as compensation for a breach of the entitlement to quiet enjoyment, unless authorized to do so by a director's order". The Tenant is at liberty to seek a claim for compensation for damage or loss pursuant to section 67 of the *Act* for breach of entitlement to quiet enjoyment.

The landlord is entitled to \$8,734.66, comprising unpaid rent, utilities, and filing fee. The landlord is ordered to retain the Tenant's \$1,400.00 security deposit along with accrued interest in the amount of \$16.23 (calculated from Jan. 24, 2023, to Aug. 28, 2023).

Unpaid rent from June-August 2023 inclusive	\$8,400.00
Unpaid utility fees	\$234.66
Filing Fee	\$100.00
Less Security Deposit and Accrued Interest	(\$1,416.23)
<b>Total</b>	<b>\$7,318.43</b>

### Conclusion

#### **Is the Landlord entitled to an Order of Possession?**

The Landlord is granted an order of possession **effective two days after service of the Order on the Tenant**. The Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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

The Landlord is granted a monetary award of \$7,318.43. The Landlord must serve it to the Tenant. Should the Tenant fail to pay, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

#### **Is either the Tenant or Landlord entitled to recover the application filing fee?**

As the Landlord was successful with their application, I grant the Landlord recovery of their filing fee of \$100.00 pursuant to section 72 of the *Act* and dismiss the Tenant's claim for the same, without leave to re-apply, as they were unsuccessful with their application. The Monetary Order of \$7,318.43 reflects the filing fee.

**Is the Landlord required to make repairs? Is the Landlord required to comply with the tenancy agreement, Act or Regulation?**

As the tenancy is ending, the Tenant's claims for repairs and an order for the landlord to comply are 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 29, 2023

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Residential Tenancy Branch