

DECISION

Introduction

This hearing dealt with cross-applications, including the tenant's June 13, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") was for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act

The hearing also dealt with the landlord's June 26, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") was for:

- Order of possession for a landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act
- Authorization to recover the filing fee from the tenant

Preliminary Matters

The tenant did not attend the hearing. Consequently, I dismissed their application under RTB Rule of Procedure 7.3. I do not give leave to re-apply.

Service of Notice and Evidence

The landlord stated that the tenant was served with notice of the dispute to their door on June 28, 2023. A completed Proof of Service Form, RTB 55, was provided. In accordance with section 90 of the Act, I deem the tenant served with notice of the claim against them on July 1, 2023.

Issue(s) to be Decided

- is the landlord entitled to an Order of Possession?
- is the landlord entitled to a Monetary Order for Unpaid rent?
- Is the landlord entitled to recover the filing fee?

Background and Evidence

The landlord indicated that the tenancy began on or about December 1, 2016. Monthly rent is currently set at \$689.50 a month and a \$325.00 security deposit was collected.

The tenant is understood to still be residing at the rental unit.

The landlord provided a copy of the 10-Day Notice to End Tenancy dated June 9, 2023. They stated that the notice was served to the door on the day that it was issued. This notice included a stated move-out date of June 19, 2023, and reported that \$689.50 in rent was not paid on June 1, 2023.

The landlord stated that rent owed, was paid on June 23, 2023, and that \$864.50 is currently owing on the tenant's account. This includes:

- Rent \$689.50
- Late fees \$50 (\$25.00 X 2)
- Legal Fee \$100.00

The landlord stated that they are concerned with the tenant's hording.

Analysis

The landlord is responsible under RTB Rule of Procedure 6.6 to establish on the balance of probabilities, the validity of the notice to end tenancy. There is a three-part test, in accordance with the Act, that examines the validity of a notice to end tenancy including:

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 accept that the notice dated June 9, 2023, was served to the tenant's door on June 9, 2023. In absence of the tenant, I deem the tenant served with this notice on June 12, 2023, in accordance with 90(c) of the Act.

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

- is signed and dated by the landlord
- it gives the address of the rental unit
- it is provided on approved form RTB 30
- the notice specifies that \$689.50 in rent was owing at the time it was issued

- The effective date the Tenant must move out is incorrect. Incorrect effective dates are automatically corrected under section 53 of the Act. The correct effective date, which has passed, is June 23, 2023

Regarding the landlord's reason for issuing this notice, I accept that the tenant did not pay June rent until June 23, 2023. This is beyond the five days allowed under 46(4) of the Act.

Based on the above, I find that the June 9, 2023, notice to end tenancy is valid.

Is the landlord 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 dated June 9, 2023, complies with section 52 of the Act.

Therefore, I find that the landlord is entitled to an Order of Possession that will be effective on August 31, 2023, after it is served on the tenant.

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

As noted above, I find that the notice to end tenancy dated June 9, 2023, is valid.

I also find that rent for the month of August 2023, in the amount of \$689.50 has not yet been paid by the tenant.

Regarding the landlord's claim for \$50.00 in late fees as a result of the tenant being late with paying rent (\$25.00) on two occasions, I find that the tenancy agreement includes reference to a \$25.00 late fee for each occurrence. As such, I find that the landlord is entitled to payment of \$50.00 in late fees as part of rent owing.

Regarding the landlord's claim for \$100.00 for legal fees, I find that this fee type is not a permitted fee type under section 7 of the BC Tenancy Act Regulations. Consequently, I deny the landlord's claim for this fee.

In sum, I find that the landlord is entitled to an order for unpaid rent in the amount of \$739.50. I make this order under section 55(1.1) of the Act.

$\$689.50 + \$50.00 = \$739.50$

Because evidence was also received that the tenant paid a \$325.00 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 \$329.10 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 \$410.40 ($\$739.50 - \$329.10 = \410.40) for the balance of unpaid rent.

Is the landlord entitled to recover the filing fee for this application from the landlord?

The landlord was successful in this application. They are authorized to recover the filing fee for this application from the tenant under section 72 of the Act.

Conclusion

I grant an Order of Possession to the landlord **effective August 31, 2023, 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 **\$510.40** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$739.50
Retain Security and Pet Deposits with current value	-\$329.10
	\$410.40
Authorization to Recover Filing Fee	+\$100.00
Total Amount	\$510.40

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.

The tenant's application for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act 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

Residential Tenancy Branch