

DECISION

Introduction

This hearing dealt with the Tenant's Application dated August 18, 2023 for Dispute Resolution under the *Residential Tenancy Act* (the "Act") 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

It also dealt with the Landlord's Application dated August 24, 2023 for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an order of possession following issuance of a 10 Day Notice to End Tenancy for Unpaid Rent under sections 46 and 55 of the Act
- a monetary order for compensation for unpaid rent under sections 46 and 55 of the Act
- a monetary order to recover the filing fee under section 72 of the Act

Both the landlord and the tenant attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I am satisfied that the Proceeding Packages were served in accordance with the Act.

Evidence

Neither party raised any issue regarding service of evidence. The tenant uploaded evidence on the same day of the hearing. I told the tenant that I would not consider it because it was submitted late and was not served on the landlord. In any event, it related to an amendment that I did not allow.

Preliminary Issue - Amendment

The tenant sought to amend her application to add a claim for monetary compensation under section 67 because she says the landlord changed the locks on the rental unit and placed all her belongings outside without an order of possession, a writ of

possession or any other right to do so. I did not allow the amendment because it was made late and evidence related to it was only submitted the day of the hearing (and not served on the landlord). The tenant can, however, bring a new application for monetary compensation against the landlord in accordance with the Act.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the landlord entitled to monetary compensation for unpaid rent and/or utilities?

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

Background and Evidence

Evidence was provided showing that this tenancy began on April 1, 2023, with a monthly rent of \$2,195.00, payable on the first of the month. Security and pet deposits totalling \$2,195.00 were paid and are currently held by the landlord. The landlord says that the rental agreement was with "D.T." and not "D.B." The tenant says that she uses "B." is her mother's maiden name and that she uses both names.

The landlord served the tenants with the 10 Day Notice on August 9, 2023 by posting a copy on the door. The tenant received the 10 Day Notice that same day. #RTB-30 was used, it was signed and dated by the landlord, gave the address of the rental unit, and stated the effective date of August 22, 2023.

The tenant did not make any payments in August or September. The tenant was waiting for her disability cheque. The tenant filed for dispute resolution on August 18, 2023.

The landlord says that on September 11, 2023, he attended at the rental unit, concluded that it was abandoned, and took possession of it, including by emptying it of belongings and changing the locks.

The tenant says that she was still living in it on September 11, 2023 while waiting for this hearing and that the landlord changed the locks and put her belongings on the street without any legal right and while she was out of the rental unit.

The tenant is no longer residing in the rental unit.

Analysis

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an order of possession?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

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 a tenant who has received a 10 Day Notice does not pay the rent or make an application for dispute resolution, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

I find that the tenant did not pay rent at all in August 2023. She disputed the 10 Day Notice on August 18, 2023, which is more than 5 days after service, which was on August 9, 2023. The tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the notice, which is August 22, 2023.

The 10 Day Notice is valid. Because the landlord has possession of the rental unit, an order of possession is not required.

Is the landlord entitled to monetary compensation for unpaid rent and/or utilities?

The landlord is entitled to unpaid rent for the month of August 2023 in the amount of \$2,195.00. The tenant was an overholding tenant until September 11, 2023 because she stayed in the rental unit after the end of the tenancy. In accordance with Policy Guideline 3, the landlord is entitled to rent on a per diem basis for the period September 1-September 11, which is \$804.83. The landlord is authorized to retain the security and pet deposit in partial satisfaction.

The landlord also claimed a water bill from the tenant from the City of Kelowna for the period of June-August 2023 for the total amount of \$376.53. The bill included arrears totaling \$246.74. It is not clear whether any of the arrears predated the tenancy. The amount was not claimed on the 10 Day Notice nor was there any evidence submitted showing written demands for payment, despite section 46(6) of the Act. I dismiss the claim for unpaid utilities without leave to reapply.

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

The tenant's application is dismissed.

I make no finding as to whether the landlord illegally evicted the tenant on September 11, 2023 by removing her belongings and changing the locks. The tenant can apply for monetary compensation if she wants to pursue this claim. The tenant is reminded to submit and serve all evidence to be relied on (including any pictures and documentation related to the value of her property) in accordance with the Act and the Rules of Procedure.

I do not grant an order of possession because the landlord has possession of the rental unit since September 11, 2023.

I grant a **\$883.10** Monetary Order to the landlord. The tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply, it may be enforced in the Small Claims Division of the Provincial Court.

Unpaid rent	\$2,195.00
Plus – Overholding	\$804.33
Less – Pet and Security Deposit	\$2,216.23
Plus – Filing Fee	\$100.00
Total	\$883.10

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: September 28, 2023

Residential Tenancy Branch