

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) under sections 49 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

And the Tenant's cross application under the Act, requesting:

- cancellation of the Two Month Notice to End Tenancy For Landlord's Use of Property (Two Month Notice) issued April 19, 2023
- an order to suspend or set conditions on the Landlord's right to enter
- authorization to change the locks on the rental unit
- an order for the return of the Tenant's personal property
- an order for the Landlord to comply with the Act, regulation, or tenancy agreement

Preliminary Matters

The Tenant did not attend at 11:00 am, the appointed time set for the hearing, although I waited while conducting the hearing until 11:20 am to allow them to participate. I confirmed that the correct call-in number and participant code had been provided in the Tenant's own Notice of Dispute Resolution Proceeding. I also confirmed on the teleconference system that the Landlord and I were the only participants who had called into this hearing.

Under Rule of Procedure 7 I dismiss the Tenant's application in its entirety, without leave to reapply.

The Landlord testified that they were granted an order of possession for this tenancy on October 20, 2023, after filing a Direct Request application. The Landlord also received an order for unpaid rent for September 2023. The Direct Request file number is noted on the cover page of this decision.

As the tenancy is already ended, I find the only issue to be decided is the matter of unpaid rent or compensation for overholding and the Landlord's filing fee for this application.

At the hearing the Landlord sought to amend the claim for unpaid rent to include the additional compensation for overholding the rental unit that became due while awaiting the hearing.

The increase in the Landlord's monetary claim for unpaid rent or overholding the rental unit should have been reasonably anticipated by the Tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the Landlord's monetary claim to include compensation for the Tenant overholding the rental unit up to the date of the hearing.

Issues to be Decided

Is the Landlord entitled to an order for unpaid rent and compensation for the Tenant overholding the rental unit?

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

Facts and Analysis

The Landlord submitted a copy of a residential tenancy agreement which was signed on April 6, 2021, indicating a monthly rent of \$750.00, due on the first day of the month for a tenancy commencing on May 1, 2021. The Landlord says the rent increased to \$756.00 per month, however they have not provided evidence of a legal rent increase.

The Landlord testified that the Tenant has mostly vacated the rental unit, having only a few more items to remove. The Tenant has not yet returned the keys, but the Landlord believes they will fully vacate the unit within the next day or so.

I accept the Landlord's undisputed testimony that the last rent payment received from the Tenant was for May 2023 although the Tenant continues to occupy the rental unit as of the date of this hearing.

I find rent owing for September 2023 has already been awarded to the Landlord. I find the tenancy was ended because of the 10 Day Notice issued on September 3, 2023, under the Landlord's Direct Request application. As such, I find the Tenant is not entitled to one month's rent compensation under a Two Month Notice pursuant to section 51 of the Act.

I find the Landlord has established a claim for rent owing for June, July, and August 2023, under section 67 of the Act, and a claim for compensation for the Tenant overholding the rental unit in October and November 2023 based on a monthly rent of \$750.00, under section 57 of the Act.

Therefore, I grant the Landlord a monetary order in the amount of \$3,750.00 under sections 57 and 67 of the Act.

As the Landlord was successful in their application, I award their filing fee of \$100.00 under section 72 of the Act.

Conclusion

I dismiss the Tenant's application in its entirety, without leave to reapply.

I grant the Landlord a monetary order in the amount of \$3,850.00 under sections 57, 67, and 72 of the Act. The Landlord is provided with this Order on 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, it 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 Act.

Dated: November 30, 2023

Residential Tenancy Branch