

DECISION

Introduction

This hearing dealt with the Tenant's and Landlord's Applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied to cancel the Landlord's 10 Day Notice for unpaid rent.

The Landlord applied for an Order of Possession based on a 10 Day Notice for unpaid rent, for a Monetary Order for unpaid rent, and for authorization to recover the filing fee for their application from the Tenant.

The Landlord testified that they were not served with the Tenant's hearing package or evidence. The Landlord was notified by the Residential Tenancy Branch of the Tenant's application when the Landlord filed their application.

I deem the Tenant was served with the Landlord's hearing package and evidence by registered mail on September 18, 2023, five days after it was mailed.

Preliminary Matter

The Landlord testified that the Tenant moved out of the rental unit on October 2, 2023. The Landlord requested to withdraw their claim for an Order of Possession based on this fact.

Under rule 4.2 and 4.2.1 of the Rules of Procedure, The Landlord's claim for an Order of Possession based on the 10 Day Notice is withdrawn from this proceeding.

Issues to be decided

Should the Landlord's 10 day Notice be cancelled?

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

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

Facts and Analysis

This tenancy began on November 1, 2022, with a monthly rent of \$2000.00 due the first of each month, and with a security deposit of \$1000.00.

The Landlord testified as follows. The Tenant paid \$1000.00 for rent on August 8, 2023. The Tenant did not pay rent on September 1, 2023. The Landlord issued a 10 Day Notice for unpaid rent on September 2, 2023, for the total \$3000.00 of unpaid rent for August and September 2023.

The Tenant applied to cancel the 10 Day Notice. The Tenant did not pay the rent arrears. The Tenant told the Landlord they would move out on September 30, 2023, but went back and forth about whether they would move out by that date over a series of text messages. The Tenant indicated on September 29, 2023 that they would be moved out by the evening of September 30, 2023. The Landlord attended the rental unit after this and found the Tenant's belongings, including a bed, dishes, coffee maker, etc, were still in the rental unit. The Tenant did not pay rent on October 1, 2023.

The Landlord texted the Tenant on October 2, 2023, asking when the Tenant would be moved out of the rental unit. The Tenant told the Landlord they had moved out on September 30, 2023. The Landlord asked about the belongings the Tenant left behind. The Tenant did not respond to the Landlord's messages about their belongings.

The Landlord attempted to arrange a walk through with the Tenant and did not receive a response. The Landlord gave two opportunities, but the Tenant did not participate in a move in inspection. The Tenant has not responded about their belongings left behind to the date of the hearing. The Tenant did not provide a forwarding address.

The total arrears for unpaid rent are \$5000.00.

The Landlord provided an RTB 46 Direct Request worksheet calculating the unpaid rent, and text messages with the tenant regarding unpaid rent, in support of their claim.

Should the Landlord's 10 day Notice be cancelled?

Based on the Landlord's undisputed testimony and evidence, I find the Tenant moved out of the rental unit on October 2, 2023. As this tenancy has ended, I dismiss the Tenant's application to cancel the 10 Day Notice under section 46 of the Act, without leave to reapply.

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

The Tenant did not notify the Landlord that they had abandoned their belongings at the rental unit and moved out on September 30, 2023. From the text messages provided by the Landlord as evidence, I find the Tenant did not confirm they would truly move out of the rental unit by September 30. On September 25, the Tenant stated "I will be out when I am out". On September 27, 2023 the Tenant stated "I actually don't have to move out until after our arbitration hearing on October 23rd".

The text messages from the Tenant on October 2, 2023 state that the Tenant had moved out on September 30, 2023. However, the Tenant had not notified the Landlord that they moved out on that date, or that they were leaving belongings behind. The Tenant also did not respond to the Landlord's inquiries about the belongings left behind by the Tenant in the rental unit. Based on these text messages and the Landlord's testimony, I find that the Tenant did not move out of the rental unit on September 30, 2023.

I find the tenancy ended on October 2, 2023, after the Tenant notified the Landlord they had moved out and effectively abandoned their belongings in the rental unit. For these reasons, I find the Tenant is responsible for rent for the month of October 2023 under section 26 of the Act and in accordance with Tenancy Policy Guideline 3.

Based on the undisputed testimony and evidence of the Landlord, I find the Tenant failed to pay rent for August, September, and October 2023, for a total of \$5000.00. I find the Landlord is entitled to a Monetary Order for unpaid rent under sections 46 and 55(1.1) of the Act.

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

As the Landlord was successful in this application, I find the Landlord is entitled to recover their filing fee for this application from the Tenant.

Conclusion

I find the Landlord is entitled to a Monetary Order of \$5000.00 for unpaid rent, and is entitled to recover their \$100.00 filing fee from the Tenant. I Order the Landlord to retain the security deposit of \$1000.00 with interest in partial satisfaction of this debt. I Order the Tenant to pay the Landlord the balance due of **\$4084.19**.

The Landlord must serve this Order to the Tenant as soon as possible. The Landlord may serve this Order by email to the email address for service provided by the Tenant on the signed tenancy agreement.

If the Tenant does not pay, this Order may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

Monetary Issue	Granted Amount
Unpaid rent	\$5000.00
Landlord's filing fee	\$100.00
Security Deposit with Interest	- \$1015.81
Total Amount	\$4084.19

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 20, 2023

Residential Tenancy Branch