

DECISION

Introduction

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

The Landlord applied for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice)
- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice)
- a Monetary Order for unpaid rent
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the Monetary Order
- authorization to recover the filing fee for this application from the tenant

The Tenant applied for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice)
- cancellation of the One Month Notice to End Tenancy for Cause (the One Month Notice)
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- authorization to reduce rent for repairs, services, or facilities agreed on but not provided
- an Order for the landlord to make repairs to the rental unit
- an Order to suspend or set conditions on the landlord's right to enter the rental unit
- an Order for the landlord to comply with the Act, regulation or tenancy agreement
- authorization to recover the filing fee for this application from the landlord

The Tenant acknowledged being served with the Landlord's hearing package, amendment, and evidence by registered mail in accordance with section 88 of the Act. The Landlord acknowledged being served with the Tenant's hearing package and evidence by registered mail in accordance with section 88 of the Act.

Preliminary Matter

Residential Tenancy Branch Rules of Procedure, Rule 2.3, states that the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

At the start of the hearing, some of the Tenant's claims were not determined to not be related to the most urgent claims about the 10 Day Notice and One Month Notice to end tenancy. Under Rule 2.3, the following claims of the Tenant are dismissed with leave to reapply:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement
- authorization to reduce rent for repairs, services, or facilities agreed on but not provided
- an Order for the landlord to make repairs to the rental unit
- an Order to suspend or set conditions on the landlord's right to enter the rental unit
- an Order for the landlord to comply with the Act, regulation or tenancy agreement

Issues to be decided

- Should the 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?
- Should the One Month Notice be cancelled? If not, 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 a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?
- Is the Landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the Monetary Order?
- Is the Landlord entitled to recover the filing fee for this application from the tenant?
- Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Facts and Analysis

This tenancy began on December 15, 2021, with a monthly rent of \$2900.00 due the first of each month, and with a security deposit of \$1450.00.

The Landlord testified as follows. The Tenant has paid the rent late almost every month since April 2023. The Tenant pays rent in partial payments throughout each month, and does not pay the full rent when it is due on the first of each month.

The Tenant often accrues unpaid rent from one month to the next, and sometimes makes additional rent payments towards these arrears. The Landlord issued the 10 Day Notice and One Month Notice by registered mail on August 31, 2023. The total arrears for unpaid rent listed on the 10 Day Notice were \$1200.00. The reason listed on the One Month Notice to End Tenancy for cause was repeated late payment of rent.

The Tenant did not pay the rent on September 1, 2023. The Tenant paid \$1900.00 for rent on September 4, 2023. The Landlord issued a 'for use and occupancy only' receipt to the Tenant for September rent payment. The Tenant did not make any other rent payments in September 2023. The Tenant did not pay the rent for October 2023.

The total arrears from April 2023 to September 2023 are \$5500.00.

The Landlord provided documentary evidence to support their claims including e-transfers from the Tenant for rent from April 2023 to September 2023, rent receipts from February 2023 to March 2023, for use and occupancy only rent receipts for August and September rent payments, a schedule of rent payments calculating the total arrears, and an RTB 37 Monetary Order Worksheet.

The Tenant testified as follows. The Tenant does not believe they were in arrears for rent before August 2023. The Tenant paid \$2400.00 for rent on August 1, 2023, and an additional \$1000.00 for rent on August 24, 2023. The Tenant paid \$1900.00 for rent on September 4, 2023. The Tenant did not pay rent for October 2023.

The Tenant did not receive the Landlord's 10 Day Notice and One Month Notice until September 13, 2023. The Notices were left in an envelope in the Tenant's mailbox next to the driveway of the rental unit. The Tenant's mail is usually left in a community mailbox, so they did not check the mailbox on the driveway until September 13, 2023. The Tenant applied to cancel the Notices as soon as they received them, and this is why they filed their application after the application deadlines for each Notice.

The Tenant had an agreement with the Landlord that allowed them to pay the rent late each month, as long as the Tenant let the Landlord know in advance when rent would be paid. The Tenant paid for a septic tank cleaning service, a total of \$609.00, which the Landlord should have reduced from their rent, because it was the Landlord's responsibility to pay this fee.

The Tenant provided documentary evidence to support their claims including e-transfer statements of rent payments for August and September 2023, and the septic tank cleaning invoice.

Should the 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 46 of the Act says that a Landlord may issue a 10 Day Notice to end tenancy for unpaid rent any day after the rent is due, if the rent is not paid by the Tenant. Under the same section of the Act, the 10 Day Notice is cancelled if the Tenant pays the overdue rent as listed on the Notice within 5 days of receiving the Notice.

Based on the testimony and evidence of the parties, I find as follows. The arrears listed on the 10 Day Notice were \$1200.00. The Notice was given on August 31, 2023, and served by registered mail. The Tenant paid \$1900.00 to the Landlord on September 4, 2023. The Tenant paid the full amount of arrears listed on the 10 Day Notice within 5 days of the Notice being issued.

For these reasons, I find the Landlord is not entitled to an Order of Possession based on the 10 Day Notice. The 10 Day Notice dated August 31, 2023 is cancelled and is of no force or effect.

Should the One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 47 of the Act says that a landlord may give a One Month Notice to End Tenancy for cause if the tenant is repeatedly late paying rent. The tenant may apply to cancel the One Month Notice within 10 Days of receiving the Notice.

In this case, the Tenant filed their application after the 10-day filing deadline set out in section 47 of the Act. However, this is inconsequential as I have made my decision based on the merits of the Landlord's claims.

Based on the evidence and testimony of the Landlord, I find that the Tenant paid rent late in April, June, July, August, and September 2023. I am not convinced by the Tenant's testimony that the Landlord allowed them to pay the rent late every month. The Tenant did not provide any evidence to support this claim.

I find that the Landlord had a valid reason to issue the One Month Notice for repeated late payment of rent under section 47 of the Act. I find the Landlord's One Month Notice meets the requirements for form and content under section 52 of the Act.

For these reasons, I find the Landlord is entitled to an Order of Possession based on the One Month Notice under sections 47 and 55 of the Act.

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

The Landlord testified that the total arrears for unpaid rent are \$5500.00. However, the Landlord was unable to provide consistent testimony and evidence which supported this claim. The Landlord's calculations of unpaid rent show a total of \$1600.00 for arrears as

of August 31, 2023, however the Landlord issued the 10 Day Notice on August 31, 2023 with a total arrears of \$1200.00. The Landlord did not provide an explanation for this discrepancy.

Further, the Landlord's calculations do not match with the e-transfer statements they provided as evidence. The Landlord's testimony did not provide as explanation for these discrepancies. The Landlord failed to convince me that the unpaid rent arrears are \$5500.00.

Both the Landlord and the Tenant testified that rent was not paid for October 2023. Based on this testimony, I find that the Tenant breached section 26 of the Act by not paying rent for October 2023, and owes \$2900.00 in unpaid rent. The Landlord did not provide sufficient evidence or testimony to support their claim for any other unpaid rent.

For these reasons, I find the Landlord is entitled to a Monetary Order for unpaid rent of \$2900.00 under section 67 of the Act.

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

This application by the Landlord is a duplicate claim for unpaid rent. As the Landlord had already applied for a Monetary Order for unpaid rent, this additional claim is not required. I have already made findings on the claim for unpaid rent.

For these reasons, the Landlord's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, with leave to reapply.

Is the Landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the Monetary Order?

Section 72(2)(b) of the Act says that if a Monetary Order is granted to a landlord, the tenant's security deposit may be applied in partial satisfaction of the tenant's debt.

The Landlord is entitled to a Monetary Order for unpaid rent of \$2900.00. For this reason, I find the Landlord is entitled to retain the Tenant's security deposit of \$1450.00, with interest, in partial satisfaction of the Monetary Order.

Is the Landlord entitled to recover the 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 \$100.00 filing fee for this application from the Tenant under section 72 of the Act.

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

As the Tenant was not successful in this application, the Tenant's application to recover their filing fee for this application under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I grant an Order of Possession to the Landlord **effective seven (7) days after the Tenant is served this Order**. The Landlord must serve this Order to the Tenant. The Tenant and anyone else occupying the rental unit must move out 2 days after they receive this Order.

If the Tenant does not comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

The Tenant is reminded that the rental unit must be left clean and without damage in accordance with section 37 of the Act. The Landlord is reminded to schedule and complete a move out inspection in accordance with section 35 of the Act.

I find the Landlord is entitled to a Monetary Order of \$2900.00 for unpaid rent, and is entitled to recover their filing fee of \$100.00 from the Tenant, for a total of \$3000.00. I Order the Landlord to retain the security deposit of \$1450.00 with interest in partial satisfaction of this debt. I Order the Tenant to pay the Landlord the balance due of **\$1526.53**.

The Landlord must serve this Order to the Tenant as soon as possible. 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	\$2900.00
Landlord's filing fee	\$100.00
Security Deposit with Interest	- \$1473.47
Total Amount	\$1526.53

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 2, 2023

Residential Tenancy Branch