

## **DECISION**

### **Introduction**

This hearing was convened following applications for dispute resolution from both parties under the *Residential Tenancy Act* (the Act), which were heard simultaneously.

The Tenant requests the following:

- 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
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act

The Landlord requests the following:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

The tenant acknowledged service of the Proceeding Package. I find that they were duly served in accordance with the Act.

The landlord acknowledged service of the Proceeding Package. I find that they were duly served in accordance with the Act.

### **Service of Evidence**

As the parties acknowledged receipt of each other's documentary evidence and did not raise any concerns regarding evidence, I accepted the documentary evidence before me for consideration.

## **Preliminary Matters**

At the outset of the hearing the landlord sought to increase their monetary claim by \$1,750.00, one month's rent, to reflect the tenant's failure to pay rent for November while awaiting this hearing.

*Residential Tenancy Branch Rules of Procedure*, Rule 4.2, states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as this was clearly rent that the tenant would have known about and resulted since the landlord submitted the application.

At the hearing the Landlord requested the return of \$400.00 which was paid to the Tenant further to the Tenant's agreement to vacate the rental unit by September 30. The Landlord did not apply for compensation for monetary loss or other money owed. Although the Landlord did apply for unpaid rent, this amount is not unpaid. I am unable to grant an order for compensation for monetary loss or other money owed in these circumstances.

Consequently, the Landlord will need to apply to the Residential Tenancy Branch in order to pursue the recovery of the \$400.00 paid to the Tenant further to their unfulfilled agreement.

## **Issues to be Decided**

Should the Landlord's 10 Day Notice be cancelled?

Is the landlord entitled to an Order of Possession based on the 10 Day Notice?

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

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

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

Is the tenant entitled to compensation for my monetary loss or other money owed?

## **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Following the Tenant's failure to pay rent for September when it was due, the parties signed an agreement indicating that the Tenant agreed to move out of the rental

property by September 30, 2023, at 1pm. The Tenant said that she required \$800.00 in order to pay for her moving expenses. The Landlord provided the Tenant with \$400.00 at the time that the agreement was signed and agreed to provide an additional \$400.00 as well as the Tenant's damage deposit upon completion of the move-out inspection.

As the Tenant did not begin preparing to move out as agreed, a 10 Day Notice for unpaid rent was served to the tenant on September 26, 2023.

The tenant had until October 1, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The Tenant completed and submitted an Application for Dispute Resolution on September 29, within the timeframe permitted.

The Tenant did not move out on September 30.

The Landlord did not provide an additional \$400.00 as the Tenant did not move out as agreed.

At the hearing, the Tenant acknowledged that she had not paid rent for September, October, and November.

## **Analysis**

### **Is the landlord entitled to an Order of Possession based on the 10 Day Notice?**

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved (Residential Tenancy Branch) form

I have reviewed the 10 Day Notice and note that it is in the approved form, signed and dated by the Landlord, and that it indicates that there is unpaid rent. I find that it complies with section 52 of 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 the tenant does not pay the arrears, or dispute the 10 Day Notice, they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I find that the 10 Day Notice was served to the tenant on September 26, 2023, and that the tenant had until October 1, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The Tenant completed and submitted an Application for Dispute Resolution on September 29, within the timeframe permitted.

In her application, the Tenant did not dispute that she failed to pay rent for the months of September, October, and November.

At the hearing the Landlord confirmed she had not received any rent from the Tenant for September, October, and November.

I find that the Tenant did not pay rent for the months of September, October, and November when they were due, nor any time after. I further find that the Tenant has not provided an evidentiary or legal basis for the cancellation of the Landlord's 10 Day Notice.

The tenant's application to cancel the 10 Day Notice is dismissed, without leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 46 and 55 of the Act.

The Landlord requested that, in the event they are granted an Order of Possession, the Tenants deliver vacant possession to them immediately.

The Tenant replied that she had received a court order further to a separate matter which required her to vacate the property November 10, and that she intended to vacate the property immediately.

I find that it is appropriate that the possession date be set for two days after this order is served.

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

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.

The Landlord claimed that as the monthly rent was \$1,750.00, the Tenant was obliged to pay total rent of \$5,250.00 for the 3-month period spanning September through November. I accept that the Landlord did not receive any payment of rent for these months.

Based on the evidence before me, I find that the Landlord has established a claim for unpaid rent owing for \$5,250.00. This amount was calculated as follows:

$\$1,750.00$  (monthly rent) x 3 (months: September, October, November) =  $\$5,250.00$

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$5,250.00.

The Landlord continues to hold the tenant's security deposit of \$875.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain the Tenant's security deposit in partial satisfaction of the monetary orders.

**Is the tenant entitled to compensation for my monetary loss or other money owed?**

Under section 67 of the Act and in conjunction with Policy Guideline #16, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In her application the Tenant claimed that the damages she was seeking pertained to moving expenses of \$800.00.

At the time of this hearing the Tenant had not yet moved. Consequently, the damages claimed do not yet exist. The tenant has failed to satisfy me that the damage or loss she has claimed exists.

The Tenant also claimed damages with respect to a storage unit fee she had incurred in the amount of \$400.00.

While I accept that the Tenant incurred such a rental charge, I am not satisfied that this amount constitutes damages or a loss occurred due to the actions or neglect of the landlord. Rather, the Tenant chose to incur the charge for the purpose of facilitating her

move from the rental premises. The reason for the Tenant's move is that she failed to pay rent.

The Tenant's claim for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed 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 to cancel the 10 Day Notice is dismissed, without leave to reapply.

I grant an Order of Possession to the landlord **effective two (2) days 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 **\$4,475.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$5,250.00
authorization to recover the filing fee for this application from the tenant under section 72 of the Act	\$100.00
Security deposit	- \$875.00
<b>Total Amount</b>	<b>\$4,475.00</b>

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 claim for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 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 Act.

Dated: November 20, 2023

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Residential Tenancy Branch