

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's Application 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 (10 Day Notice) under sections 46 and 55 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Nobody attended the hearing for the Tenants.

Landlord AJC attended the hearing.

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

I find that the Landlord was served on December 14<sup>th</sup>, 2023, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing on December 9<sup>th</sup>. The Tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

### **Preliminary Matters**

This hearing began via Conference Call at 11:00 AM, with the landlord AJC attending. Neither of the tenants attended although the conference call was left open for the duration of the hearing, approximately 40 minutes.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondents.

The Landlord filed a cross-application to enforce the 10 Day Notice. As the claims entirely duplicate the relief available in the primary application, the issues are resolved in the same manner in both applications.

### **Issues to be Decided**

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?

Is either the Landlord or Tenant entitled to recover the filing fee for this application from the other party?

## **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.

Evidence was provided showing that this tenancy began on April 1<sup>st</sup>, 2023, with a monthly rent of \$1,900.00, due on first day of the month, with a security deposit and a pet damage deposit, each in the amount of \$950.00. The tenancy agreement provided for a fixed term of one year, ending March 31<sup>st</sup>, 2024.

AJC testified that the Tenants did not pay their rent for December 2023. She testified that she then gave the Tenant a 10 Day Notice on December 2<sup>nd</sup> by leaving a copy in the mail slot and sending a copy by email. AJC testified that the Tenants have since made no payment in respect of the December rent. AJC testified that she believes the Tenants left the rental unit on or about December 31<sup>st</sup>.

## **Analysis**

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

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(s) do 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 duly served to the Tenant on December 5<sup>th</sup>, 2023, and that the Tenant had until December 10<sup>th</sup> to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenant disputed the Notice on December 4<sup>th</sup>.

I find that rent was payable for December and that the Tenant has not paid the rent. I have inspected the Notice, and find that it complies with section 52 of the Act.

For the above reasons, the Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act is dismissed, without leave to reapply.

### **Is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?**

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the 10 Day Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession.

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

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

The Landlord testified that the Tenant has not paid rent for December 2023, and I accept that testimony.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$1,900.00.

### **Is either the Landlord or Tenant entitled to recover the filing fee for this application from the other party?**

While the Landlord was successful in her application, her application was duplicative of that of the Tenants', who filed their application two days earlier and who had earlier indicated their intention to dispute the Notice. As I find the Landlord's application to have been unnecessary, I decline to allow the recovery of the filing fee.

### **Conclusion**

I grant an Order of Possession to the Landlord **effective two days after service of this Order on the Tenant**. Should the Tenant 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 **\$1,900.00** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent under section 55 of the Act	\$1,900.00
<b>Total Amount</b>	<b>\$1,900.00</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 application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 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: January 31, 2024

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Residential Tenancy Branch