

DECISION

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear crossed applications.

The Tenant's December 20, 2023 application (file number ending in 413) pursuant to the Act is 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;
- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act;
- An Order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act;
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act.

The Landlord's December 28, 2023 application (file number ending in 919) pursuant to the Act is for:

- An Order of Possession under a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) pursuant to sections 46 and 55;
- A Monetary Order for unpaid rent, pursuant to section 26;
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant was served on January 3, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number, addressee, and destination, to confirm this service. The Canada Post tracking site indicates that the mail has not been picked up by the Tenant; the Tenant cannot avoid service by not picking up the registered mail.

The Landlord states that they only received the first two pages of the Proceeding Package from the Tenant. In absence of any proof of service documentation or testimony from the Tenant, I conclude that the Landlord was not served in accordance with the Act.

Service of Evidence

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

The Landlord states that they received 10 pages of evidence from the Tenant. Based on the description of the evidence received by the Landlord, I observe that the Tenant has uploaded different evidence to the RTB for this hearing that was not served to the Landlord. In absence of any proof of service documentation or testimony from the Tenant, I conclude that the Landlord was not served with all evidence in accordance with the Act.

Preliminary Matters

Should the hearing proceed without the Tenant?

The Landlord and I were in the teleconference for a total of 57 minutes, until 10:27 AM. I checked the internal case management system the day of the hearing for any record of contact from the Tenant. Rule of Procedure 7.8 requires the Tenant to have a representative attend the hearing and ask for an adjournment if they require one.

The Landlord was ready to proceed. In the absence of any contact from the Tenant to request an adjournment, I proceeded with the hearing as permitted by Rule 7.3.

Dismissal of some claims from the Tenant's application

As the Tenant did not appear at the hearing to present the merits of their application, the following claims are dismissed with leave to reapply:

- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act;
- An Order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act;

I make no findings in relation to these claims.

Issues to be Decided

Should the Landlord's 10 Day 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 Tenant or the Landlord entitled to recover the filing fee from the other party?

Facts and Analysis

Based on the undisputed evidence and testimony of the Landlord, this tenancy started on September 1, 2013, and a security deposit in the amount of \$542.00 was paid on August 6, 2013.

Resulting from a previous hearing which took place on December 11, 2023, an Arbitrator determined that the current rent is \$1,127.50 per month and that the Tenant owes an arrears of \$5,719.50 in unpaid rent (file number ending in 805, full file number cited on cover page of this decision, decision is dated December 12, 2023). The Arbitrator set aside a previous 10 Day Notice but affirmed that the Landlord retains the right to serve another 10 Day Notice if this amount of rent remains unpaid. I note that the previous Arbitrator also authorized the Tenant to deduct \$100.00 from future rent to recover the filing fee.

On December 13, 2023, the Landlord signed and issued a 10 Day Notice to the Tenant, which was served in person on the same day according to the submitted proof of service document and as referenced by the Tenant in their application. The 10 Day Notice indicated a move-out date of December 31, 2023, and listed \$5,719.50 in unpaid rent.

The Landlord states that, as of the date of this hearing, they have not received any of the unpaid rent.

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 served to the Tenant on December 13, 2023, and that the Tenant had until December 18, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The Tenant's application to dispute the 10 Day Notice was late by two days, as it was made on December 20, 2023. As the Tenant's application was very close to the deadline, I explored the merits of their application – even in their absence. This is given the severity of the consequences and given the fact that late applications can be considered if there are extenuating circumstances.

I see that the Tenant's application lists various reasons for disputing the amount of arrears on the 10 Day Notice. Those include allegations involving the loss of quiet enjoyment, harassment, and \$200.00 in previously awarded filing fees. Aside from the filing fees, and in absence of clear evidence of awards granted against the Landlord by an Arbitrator, the Tenant's reasons are not lawful reasons to withhold rent. I note that the previously cited Arbitrator accounted for one of the previous \$100.00 filing fees in their calculations when arriving at the sum of \$5,719.50 in arrears, but the most recent \$100.00 filing fee has not been applied to that amount.

The Tenant had the right to deduct \$100.00 from the amount listed on the 10 Day Notice but should have paid \$5,619.50 of the arrears. The Landlord confirms that they listed the full amount on the 10 Day Notice to match the previous Arbitrator's decision but were aware that the Tenant had the right to deduct \$100.00 from a future rent and would have accepted \$5,619.50 to cancel the 10 Day Notice. I note that this is consistent with the Landlord's other claim for unpaid rent within their application.

Based on the undisputed testimony and evidence from the Landlord, I find the Tenant failed to pay the lawfully owing rent within five days of receiving the 10 Day Notice and did not have a lawful reason for withholding that rent.

I uphold the Landlord's 10 Day Notice and dismiss the Tenant's application to cancel the 10 Day Notice. This tenancy ended on the effective date of the 10 Day Notice, on December 31, 2023. Accordingly, as per section 55 of the Act, I award the Landlord with 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's application also includes a claim for \$5,619.50 in unpaid rent. This accounts for the outstanding credit of \$100.00 awarded by the previous Arbitrator. I find that this amount is consistent with the current arrears of unpaid rent owed by the Tenant.

Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent in the amount of \$5,619.50. As per section 72 of the Act, I authorize the Landlord to retain the security deposit plus interest, valued at \$553.51, to offset the monetary award.

Is the Tenant or the Landlord entitled to recover the filing fee from the other party?

As the Landlord was successful in their application, they are entitled to a Monetary Order of \$100.00 to recover the filing fee under section 72 of the Act.

As the Tenant was unsuccessful in their claims, the Tenant's application for authorization to recover the filing fee from the landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I grant an Order of Possession to the Landlord effective on **February 13, 2024, at 1:00 PM**, 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 also grant the Landlord a Monetary Order in the **amount of \$5,165.99** under the following terms:

Monetary Issue	Granted Amount
Unpaid rent	\$5,619.50
Filing fee	\$100.00
Security deposit plus interest	-\$553.51
Total Amount	\$5,165.99

The Landlord is provided with this Order in 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, 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 to cancel the 10 Day Notice is dismissed, without leave to reapply.

The Tenant's application to recover the filing fee 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 22, 2024

Residential Tenancy Branch