

## **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
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (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 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)**

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

### **Service of Evidence**

Based on the submissions before me, I find that the tenant's evidence was not served to the landlord in accordance with section 88 of the Act. The Landlord affirms not receiving evidence from the Tenant.

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 affirms serving evidence to Tenant by an email that was provided for service

### **Preliminary Matters**

At the outset of the hearing the Landlord sought to increase their monetary claim from \$3405.00 to \$6705.00 to reflect the Tenant's failure to pay \$3300.00 in monthly rent for January 2024, the additional month of unpaid rent waiting for 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.

## **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 tenant entitled to an order for the Landlord to make repairs to the rental unit?**

**Is the landlord entitled to a Monetary Order for Unpaid Rent?**

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

## **Background and Evidence**

I have heard all the testimony of the parties but will refer only to what I find relevant for my decision.

The Landlord provided a copy of the tenancy agreement showing rent is \$3300.00 per month, due on the first day of the month. It shows a security deposit of \$1650.00. The tenancy agreement addendum states a \$25.00 late fee will be charged, as well as a \$40.00 NSF fee for returned cheques.

The Landlord's copy of the 10 Day Notice was signed on December 1, 2023, with a move out date of December 28, 2023. It requests \$3405.00 due on December 1, 2023. The Landlord provided a Proof of Service RTB-34 stating the 10 Day Notice was emailed to the Tenant on December 15, 2023.

The Landlord provided a Direct Request Worksheet claiming the following:

December 2023 rent	\$3300.00
December 7, 2023	\$65.00 NSF and late fee
December 15, 2023	\$40.00 NSF
Total	\$ 3405.00

The Landlord affirms that the rent for December 2023, and January 2024 remains unpaid. The Landlord provided a copy of the Tenant's ledger supporting the unpaid rent claim.

## **Analysis**

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

I find that the 10 Day Notice was duly served to the Tenant on December 18, 2023, and the rent for December 2023 and January 2024 remains unpaid. Therefore, I find that the landlord is entitled to an Order of Possession based on the 10 Day Notice under sections 46 and 55 of the Act.

### **Is the tenant entitled to an order for the Landlord to make repairs to the rental unit?**

As the 10 Day Notice was not cancelled and the Landlord is being given an Order of Possession, this issue was not adjudicated and is dismissed, without leave to reapply.

### **Is the landlord entitled to a Monetary Order for Unpaid Rent?**

I find that the landlord has established a claim for \$6600.00 in unpaid rent for December 2023 and January 2024.

As a \$25.00 late fee is mentioned in the tenancy agreement, I find the Landlord has established a claim for \$50.00 in late fees.

Although a \$40.00 NSF fee is in the addendum, I find the Landlord is not entitled to this as section 7 of the *Residential Tenancy Regulation* states, "an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution.

Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act as follows:

December 2023 rent	\$3300.00
December 2023 late fee	\$25.00
January 2024 rent	\$3300.00
January 2024 late fee	\$25.00
<b>Total</b>	<b>\$6650.00</b>

### **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

I grant an Order of Possession to the Landlord **effective at 1:00 PM on January 31, 2024, 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 **\$6750.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid under sections 55 and 72 of the Act	\$6650.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$6750.00</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 Landlord may retain the Tenant's security deposit as partial satisfaction of the Monetary Order.

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

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Residential Tenancy Branch