

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 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

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Proceeding Package was duly served in accordance with the Act.

Service of Evidence

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

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.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled?

Is the landlord entitled to an Order of Possession?

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

Is the tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

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

Background and Evidence

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

Both parties agree that the monthly rent is \$2800.00. The Tenants affirm that rent is due on the first day of the month, while the Landlord affirms that rent is due on the 15th day of the month.

The Landlord provided a copy of the Tenancy Agreement; it is signed by the Landlord on August 13, 2022, and by Tenant J.C. on August 15, 2022. It confirms rent is \$2800.00 and is due on the 15th of each month.

The Tenants affirms that this Tenancy Agreement is fraudulent creation of the Landlord, and that no written tenancy agreement exists, only a verbal agreement. The Landlord affirms the written tenancy agreement is a valid agreement was signed by both parties.

Both parties provided copies of the 10 Day Notice. It is signed November 21, 2023, with a moveout date of December 12, 2023. It requests \$14,500.00 in unpaid rent that was due on November 1, 2023.

The Landlord's direct request worksheet lists unpaid rent as follows:

June 1, 2023	\$500.00
July 1, 2023	\$2800.00
August 1, 2023	\$2800.00
September 1, 2023	\$2800.00
October 1, 2023	\$2800.00
November 1, 2023	\$2800.00
Total	\$14,500.00

The Landlord affirms that no rent has been received from the Tenants since June 9, 2023, when the Tenants paid \$2200.00 towards rent for June 2023.

The Tenants affirm that rent was paid in cash for all months in question, but they never received a receipt.

The Tenants confirm that rent for December 2023 and January 2024 remains unpaid. They affirm that they have not paid this rent because the Landlord does not give receipts.

The Landlord affirms providing receipts when rent was paid. The Landlord provided his copies of rent receipts covering the period from December 28, 2022, until May 25, 2023. The ledger shows the Tenants have a history of multiple partial rent payments, and late rent payments. The Tenants agree that they do have a historical pattern of paying late and in partial payments.

The Tenants provided a copy of the decision for hearing 910116176 between the parties where the arbitrator dismissed a previous 10 Day Notice served to the Tenants in July 2023. It was dismissed because neither party provided a copy of the 10 Day Notice and the Arbitrator made no finding on the existence of unpaid rent.

Analysis

The Tenants affirm paying rent in cash and not receiving a receipt. The Landlord affirms rent remains unpaid.

In July 2023, the Tenants became aware of the issue of alleged unpaid rent when they were given the 10 Day Notice that was the subject of the previous hearing. The Tenants affirm that despite this, they continued to pay rent every month until December 2023 in cash and did not obtain a receipt. The Tenants did nothing to mitigate this ongoing issue. Available options include applying to the RTB for the Landlord to conform with the Act and issue receipts, recording themselves paying rent, have a third party witness rent payments, or use another method besides cash to pay rent. I find it problematic that the Tenants chose not to do any of the mentioned options, and instead, in December 2023, and January 2024, chose to not to pay rent at all because the Landlord would not issue receipts.

For the above reasons I find the Landlord's account of events to be more plausible.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Analysis

Should the Landlord's 10 Day Notice be cancelled?

I find the Landlord's version of events to be the most plausible. I find their testimony and evidence that rent for the months in question remains unpaid to be sufficient.

For the above reasons, the tenant's application for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) and an extension of

the time limit to dispute the One Month Notice under sections 47 of the Act is dismissed, without leave to reapply.

Is the Landlord entitled to an Order of Possession?

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 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 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.

Section 55 of the Act states if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice, the director must grant an order requiring the payment of the unpaid rent.

Regarding the rent due date, the Tenants affirm is the first day of each month, while the Landlord affirms it is the 15th day and provided a copy of a Tenancy agreement supporting this. However, on the 10 Day Notice and on his Direct Request Worksheet, the Landlord used the first day of the month as the rent due date. I find that the Landlord has created the implicit understanding by his actions that rent is due on the first day of the month, despite what the tenancy agreement states. Therefore in my calculations of unpaid rent I use the first day of the month.

I find that the landlord has established a claim for \$20,100.00 in unpaid rent as follows:

June 1, 2023	\$500.00
July 1, 2023	\$2800.00
August 1, 2023	\$2800.00
September 1, 2023	\$2800.00
October 1, 2023	\$2800.00
November 1, 2023	\$2800.00
December 1, 2023	\$2800.00
January 1, 2024	\$2800.00
Total	\$20,100.00

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

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

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 Tennant 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 for authorization to recover the filing fee for this application 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 two (2) days after this order 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 **\$20,100.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under sections 55 and 72 of the Act	\$20,100.00
Total Amount	\$20,100.00

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 is dismissed in its entirety, 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: February 14, 2024

Residential Tenancy Branch