

## **DECISION**

### **Introduction**

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

The Tenant's January 12, 2024 Application 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
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord's January 18, 2024 Application 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
- An authorization to retain all or a portion of the security and/or pet deposit, under section 38
- An authorization to recover the filing fee for this application, under section 72

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

The Landlord acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I deem that the Tenants were served with the Proceeding Package to the pre-agreed email address for service on January 22, 2024, three days after it was sent by email.

### **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? If not, is the Landlord entitled to an Order of Possession?

## **Preliminary Matters**

*Should the hearing proceed without the Tenant?*

The Landlord and I were in the teleconference for a total of 38 minutes, until 10:08 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.

## **Background and Evidence**

Based on the undisputed testimony and evidence of the Landlord, the original tenancy agreement was for the upper suite, and started July 15, 2023, and was a fixed term to July 31, 2025. The rent was \$2,800.00 per month, due on the first day of each month. A \$1,400.00 security deposit, and a \$1,400.00 pet deposit, was paid on July 7, 2023.

The tenancy agreement was amended on September 1, 2023, to include the basement suite; monthly rent was increased to \$4,200.00 to reflect this change. The Landlord states that a written version of this amended tenancy agreement was prepared for the Tenant, who never signed it. However, the Tenant paid \$4,200.00 per month up until January 2024; the Landlord provided a ledger to substantiate the history of rent payments.

According to the Landlord, the Tenant had said they were bringing family to live in the downstairs suite. In November 2023, the Landlord found out that the Tenant had, in fact, rented out the downstairs suite as a sublet.

In January 2024, the Tenant did not pay the full rent. The Landlord's uncontested ledger and testimony shows that the Tenant paid \$1,000.00 on January 2, then \$1,000.00 on January 3, and \$200.00 on January 4, 2024 – resulting in \$2,000.00 in unpaid rent. Therefore, on January 4, 2024, the Landlord issued a 10 Day Notice to end tenancy for unpaid rent (the Notice). The Notice was signed on January 4, 2024, indicated a move-out date of January 17, 2024, and listed \$2,000.00 in arrears from January 2024. The Landlord states that the Tenant paid \$600.00 towards the arrears on January 12, 2024, and that there is still \$1,400.00 left unpaid as of the date of this hearing.

## **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 received by the Tenant on January 4, 2024, and that the Tenant had until January 9, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The Tenant disputed the 10 Day Notice on January 12, 2024, which is not within the required timeline. I acknowledge that the Tenant paid some of the arrears, in the amount of \$600.00, but this payment did not cover the full amount of arrears nor was this payment made within the required timeline.

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. I find that the tenancy ended on the effective date of the 10 Day Notice, on January 17, 2024.

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 authorized to retain any portion of the security and/or pet deposit(s) to offset the Monetary Award?**

The Landlord has established their claim to \$1,400.00 in unpaid rent. Accordingly, under section 55 and 38 of the Act, I authorize the Landlord to retain \$1,400.00 from the pet deposit in satisfaction of the Monetary Award for unpaid rent.

**Is either party entitled to the filing fee?**

The Tenant is unsuccessful in their claims. Therefore, 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.

The Landlord was successful in their claims. Therefore, I authorize the Landlord to retain \$100.00 from the security deposit as per section 72 of the Act.

**Conclusion**

The Tenant's entire application is dismissed, without leave to reapply.

This tenancy ended on January 17, 2024, because of the 10 Day Notice dated January 4, 2024.

I grant an Order of Possession to the Landlord effective **on February 21, 2024, at 1:00 PM, after service of this Order** on the Tenant. Should the Tenant or any occupant 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.

The Landlord is authorized to retain a total sum of \$1,500.00 from the security and pet deposits:

- \$1,400.00 from the pet deposit for unpaid portion of January 2024 rent
- \$100.00 from the security deposit for the filing fee

The Landlord continues to hold \$1,300.00 of the Tenant's security deposit.

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 13, 2024

---

Residential Tenancy Branch