

## **DECISION**

### **Introduction**

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
- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 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 the Tenant was served on January 31, 2024, by registered mail in accordance with section 89(1) of the Act and is deemed to have received the Proceeding Package on February 5, 2024, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

### **Issues to be Decided**

Is the Tenancy at an end?

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

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

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

## **Facts and Analysis**

Evidence was provided showing that this tenancy began on October 1, 2022, with a monthly rent of \$1,175.00, due on first day of the month, with a security deposit in the amount of \$587.50. Interest of \$14.00 has accrued on the deposit from January 1, 2023, to the date of this hearing. The Tenant provides yard work services for which the Landlord reduces rent each month to \$1,025.00.

### **Is the Tenancy at an end?**

The Landlord issued a 10 Day Notice on January 12, 2024, for rent owing as of January 1, 2024. The Tenant paid rent in time to cancel this notice.

The Landlord issued a One Month Notice on January 17, 2024, requiring the Tenant to vacate by February 29, 2024, for repeated late payments of rent. The Tenant disputed the One Month Notice on January 30, 2024, acknowledging receipt of the One Month Notice on January 23, 2024, by registered mail.

The Landlord also issued a subsequent 10 Day Notice on February 3, 2024, served to the door of the rental unit. The Landlord amended their application to include this 10 Day Notice and the Landlord says they served the amendment to the Tenant. However, they have not presented evidence of serving the amendment. Therefore, the Arbitrator will only consider the One Month Notice issued January 17, 2024.

I accept the Landlord's testimony and evidence that the Tenant has paid rent late each month since August 2023. I find the Landlord has established repeated late payments of rent sufficient to bring an end to the tenancy under section 47 of the Act.

Therefore, I find the Landlord is entitled to an Order of Possession effective February 29, 2024 at 1:00pm.

### **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.

I accept the Landlord's evidence and testimony that the last rent payment received from the Tenant was on January 17, 2024, for rent owing for January 2024. I accept the Landlord's testimony that the Tenant still resides in the rental unit and has provided yard work services for February 2024.

Based on the evidence before me, I find that the Landlord has established a claim for unpaid rent owing for February 2024 in the amount of \$1,025.00.

**Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?**

The Landlord has requested lost rental revenue for March 2024. However, the Landlord has not presented any evidence to support this claim. For example, the Landlord has not explained whether the rental unit is currently listed for rent and whether they have completed any showings. As the Landlord has not yet suffered this loss, and it is not clear when a new Tenant may move into the rental unit, I find I cannot determine the actual value of the claim.

Therefore, I dismiss this claim with leave to reapply.

**Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?**

I find the Landlord has established a claim for rent owing for February 2024.

Therefore, under section 72 of the Act, I allow the Landlord to retain the Tenant's security deposit plus interest in the total amount of \$601.50, in partial satisfaction of the monetary award.

**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 February 29, 2024 at 1:00pm, 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 **\$523.50** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$1,025.00
authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act	-\$601.50

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>\$523.50</b>

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 Landlord's application for a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, with 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 26, 2024

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Residential Tenancy Branch