

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

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
- 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 Tenant(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

Based on the submissions before me, I find that the Tenant's Proceeding Package was not served to the landlord in accordance with section 89 of the Act. The Tenant confirmed not serving the Landlord.

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.

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?

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 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.

Both parties agree that monthly rent is \$3500.00, and that the Landlord still has the security deposit of \$1750.00.

The Landlord provided a copy of the 10 Day Notice. It is signed February 3, 2024, with a moveout date of February 14, 2024. It requests \$3500.00 in unpaid rent due on February 1, 2024.

The Tenant affirms receiving the Notice on February 5, 2024, while the Landlord affirms serving it in person to the Tenant on February 3, 2024. The Landlord provided a copy of a Proof of Service RTB-34 stating service was done February 3, 2024, and witnessed by his son. His son affirms the Notice was served on February 3, 2024.

Both parties agree that the February 2024 rent of \$3500.00 remains unpaid.

The Tenant affirms vacating the rental unit on February 24, 2024. The Tenant affirms the rental unit uses a key pad so there were no keys to be returned to the Landlord.

The Landlord affirms believing the Tenant is still in the rental unit as they received no communication from the Tenant that they vacated.

Both parties also agree that the Tenant rented out part of the rental unit to other people. The Tenant affirms they have vacated the rental unit as well, but the Landlord affirms he believes they are still residing in the rental unit.

Analysis

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

As both parties agree that the requested February 2024 rent remains unpaid, and the 10 Day Notice fits the form and content required by the Act, I decline to cancel the Landlord's Notice.

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?

I find that the landlord has established a claim for \$3500.00 in unpaid rent for February 2024. 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 Landlord entitled to recover the filing fee for this application from the Tennant?

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 Two (2) days 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 **\$3600.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 and 72 of the Act	\$3500.00

authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$3600.00

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 Landlord may retain the security deposit of \$1750.00 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: February 29, 2024

Residential Tenancy Branch