

## **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 One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 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 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 also dealt with the Landlord's Cross Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- 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
- 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

Both parties attended and were given a full opportunity to be heard, to present their affirmed testimony, and to make submissions.

During this decision I will refer to the Tenants in the singular form.

## **Service of Dispute Resolution Proceeding and Evidence**

As both parties were in attendance, I confirmed that there were no issues with service of the application and their respective evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were duly served with the materials.

## **Preliminary Issues**

Although the Tenant acknowledged receipt of the Landlord's evidence, the Tenant raised the issue that they were not able to view the video evidence. The Landlord agreed to exclude the video evidence and remarked that they did not upload the video evidence to the Residential Tenancy Branch Dispute Management System.

Since the parties agreed to exclude the video evidence and agreed to continue with the hearing, I exercised my discretion to commence the hearing.

## **Issues to be Decided**

Does the One Month Notice end the tenancy? If yes, is the Landlord entitled to an order of possession?

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Is the Tenant entitled to an order regarding the Tenant dispute of an additional rent increase by the Landlord?

Is the Tenant entitled to an order authorizing the Tenant to reduce rent?

Is the Tenant entitled to an order for the Landlord to make repairs to the rental unit?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, Regulation or Tenancy Agreement?

Is the Tenant entitled to an order authorizing the return of the filing fee from the Landlord?

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

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 an order authorizing the return of the filing fee from the Tenant?

## **Background and Evidence**

I have reviewed the evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The parties agreed that this tenancy began on August 1, 2013, and that the tenancy is ongoing. At the time of the hearing, the parties agreed that monthly rent was \$925.81, due on the first day of the month. The Landlord holds the Tenant's \$412.50 security deposit, and the Landlord holds the Tenant's \$412.50 pet damage deposit. The rental unit is located at a mobile home park, however the parties agreed that the Landlord owns the pad the rental unit is parked on, and the Landlord owns the mobile home.

The parties agreed that the Landlord personally served the Tenant with a One Month Notice on December 22, 2023. The effective date of the One Month Notice is January 31, 2024. The reasons for cause on the One Month Notice are:

- the Tenant has significantly interfered or unreasonably disturbed another occupant or the Landlord
- the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord
- the Tenant has put the Landlord's property at significant risk
- the Tenant has caused extraordinary damage to the rental unit or rental property.

The Tenant testified that they have lived at the rental unit for a long time and have lived there since 2013. The Tenant stated that there have been lots of disruptions at the mobile home park, and that the Landlord has not been maintaining the both the mobile home and the mobile home park.

The Tenant affirmed that they have requested for repairs on the deck from the Landlord on multiple occasions, but these repairs have not been completed. The Tenant requested a \$135.00 reduction in the monthly rent due to the loss of access to the deck.

To support the above the Tenant's evidence included a substantial amount of pictures of the deck, and email records of their requests to the Landlord to fix the deck.

The Tenant testified that due to the increased theft at the mobile home park, they had to rent a post office box. The Tenant requested compensation in the amount of \$303.98 for the cost of the post office box service, the Tenant submitted a copy of the receipt.

The Landlord testified in opposition and offered their version of the timeline of events. The Landlord claimed that the Tenant breached section 47 of the Act by causing damage to the Landlord's property.

The Landlord affirmed that they have attempted to repair the deck, but the Tenant refused the work. Moreover, the Landlord stated that the Tenant removed the deck and denied the Landlord access to the deck. The Landlord declared that the Tenant has refused to allow the Landlord into the rental unit. To support this, the Landlord's

evidence included a substantial amount of email correspondence between the Tenant and the Landlord.

In the email correspondence evidence dated November 9, 2023, the Landlord gave the Tenant notice that the Landlord's agents will be performing work on the rental unit sometime next week. The Tenant responded on November 13, 2023, and advised the Landlord that the Landlord's Agent C.L.J. will not be permitted inside. The Tenant also stated that they have the right to determine who enters the rental unit.

In the email correspondence dated December 20, 2023, the Tenant advises the Landlord not to bother them until January 2, 2024. To which the Landlord replies that their agent will finish the repairs when he returns.

Regarding the Tenant's request for compensation, the Landlord testified that the Tenant has their own locked mailbox and that the Tenant's problems with mail theft is not the Landlord's responsibility.

Regarding the Landlord's request for unpaid rent, the Landlord testified that they increased the rent in 2020, 2022, 2023, and 2024. The Landlord stated that they calculated the rent increase incorrectly in 2022. To support the fact that the Tenant has not paid rent, the Landlord's evidence contained a spreadsheet to document the rent payments. For this issue the Landlord claimed the Tenant owed \$1,241.68 in unpaid rent as of January 31, 2024.

The Tenant disputed the unpaid rent and claim that the parties had an agreement during May of 2022 where the parties agreed that there would be three months of free rent, including May 2022. The Landlord disputed this and claimed the parties never came to an agreement.

## **Analysis**

### **Does the One Month Notice end the tenancy? If yes, is the Landlord entitled to an order of possession?**

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

I find the Tenant filed their dispute within the required timeline.

I have examined the One Month Notice and find it complies with section 52 of the act for form and content.

The onus is on the Landlord to show they have grounds to issue the One Month Notice.

Section 29 of the Act provides the conditions that a landlord needs to comply with in order to enter the rental unit. To summarize the most applicable section 29(1), the landlord must provide written notice at least 24 hours in advance, and not more than 30 days before the entry unless the tenant gives permission at the time of the entry of not more than 30 days before the entry. The time of entry must be between 8:00AM and 9:00PM.

In other words, if the Landlord gives written notice and provides a reasonable purpose for their entry, the Tenant may not deny the Landlord entry to the rental unit.

In this case, I find the Landlord provided notice and their reasons for entering the rental unit on multiple occasions, but the Tenant denied the Landlord access. For my decision I assigned considerable weight to the email exchanges between the parties which are contained in the Landlord's evidence. Specifically, the Landlord's email evidence dated November 9 and December 20 of 2023 where the Tenant expressly denied the Landlord and their agents entry.

I find that the Tenant's denial of entry violated section 47(1)(d) of the Act and the Landlord had grounds to serve the One Month Notice.

For the above reasons, I uphold the Landlord's One Month Notice.

Given I upheld the Landlord's One Month Notice, the Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause under section 47 of the Act is dismissed, without leave to reapply.

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.

The Landlord's cross application for an Order of Possession based on the One Month Notice is granted.

I find that the Landlord is entitled to an Order of Possession.

Given the length of the tenancy, the amount of possession the Tenant has accumulated at the rental unit, I find that March 31, 2024, is an appropriate date for the Order of Possession.

**Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?**

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement;
- damage or loss has resulted from this failure to comply;
- the amount of or value of the damage or loss; and
- the tenant acted reasonably to minimize that damage or loss.

A party must satisfy all four points of the abovementioned test to be entitled to compensation.

For this issue, the Tenant has requested compensation in the amount of \$303.98. The Tenant claims the Landlord is responsible for the costs of a post office box rental due to the increased amount of mail theft at the mobile home park.

Residential Tenancy Branch Policy Guideline #1 provides that a landlord must give the tenant keys to access the mailbox. I find that the Landlord has complied with the Act and the Policy Guideline and provided the Tenant with access to a locked mailbox.

I find the Tenant did not provide sufficient evidence to demonstrate that the Landlord breached the tenancy agreement. The Landlord is not liable for the theft of mail at the rental unit.

Subsequently, I find the Tenant has not satisfied the first condition of the abovementioned four-point test and ultimately the test fails.

I find the Tenant is not entitled to a Monetary Order for compensation under the Act. The Tenant's request for a Monetary Order for compensation is dismissed, without leave to reapply.

### **Is the Tenant entitled to an order regarding the Tenant dispute of an additional rent increase by the Landlord?**

Given that this tenancy is ending on March 31, 2024, I find this issue is no longer relevant and I decline to adjudicate the issue.

The Tenant's request for an order regarding the Tenant's dispute of an additional rent increase is dismissed, without leave to reapply.

### **Is the Tenant entitled to an order authorizing the Tenant to reduce rent?**

Given that this tenancy is ending on March 31, 2024, I find this issue is no longer relevant and I decline to adjudicate the issue.

The Tenant's request for an order authorizing the reduction of rent increase is dismissed, without leave to reapply.

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

Given that this tenancy is ending on March 31, 2024, I find this issue is no longer relevant.

The Tenant's request for an order requiring the Landlord to make repairs to the rental unit is dismissed, without leave to reapply.

**Is the Tenant entitled to an order requiring the Landlord to comply with the Act, Regulation or Tenancy Agreement?**

Given that this tenancy is ending on March 31, 2024, I find this issue is no longer relevant.

The Tenant's request for an order requiring the Landlord to comply with the Act and the tenancy agreement is dismissed, without leave to reapply.

**Is the Tenant entitled to an order authorizing the return of the filing fee from the Landlord?**

As the Tenant was not successful in this application, I find that the Tenant is not entitled to recover the \$100.00 filing fee for this application.

The Tenant's request to recover the filing fee from the Landlord is dismissed, without leave to reapply.

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

Given the Landlord's own admission that they used the incorrect rent increase form in 2022, I am not convinced by the Landlord's spreadsheet and testimony that the Tenant owed \$1,241.68 in unpaid rent.

In addition, I assign weight to the amount of that time that has passed since the beginning of the accumulation of unpaid rent, and I find that the Landlord has not acted reasonably to collect unpaid rent or attempt to minimize their loss.

Section 7 of the Act requires a landlord who claims for compensation must do whatever is reasonable to minimize the damage or loss. In this case, the Landlord allowed the unpaid rent to accumulate over a significant period and did not act to assert their right to correct the issue.

Based on the testimony of the parties, the evidence submitted, and on a balance of probabilities, I find the Landlord has failed in their claim for unpaid rent as they have not submitted sufficient evidence to clearly demonstrate the correct amount of rent, and the amount of unpaid rent.

I find the Landlord is not entitled to a monetary order for unpaid rent, and I dismiss the Landlord's request, without 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?**

Given that I did not award a monetary order to the Landlord, I find that the Landlord is not entitled to retain the security deposit.

The parties are advised to comply with section 38 of the Act to determine the disposition of the security deposit when the tenancy ends.

The Landlord's request to retain the security deposit in satisfaction of a monetary award for unpaid rent is dismissed, without leave to reapply.

**Is the Landlord entitled to an order authorizing the return of the filing fee from the Tenant?**

As the Landlord was only partially successful in their application, I find that the Landlord is not entitled to an order authorizing the return of the filing fee from the Tenant.

**Conclusion**

The Tenant's application to cancel the One Month Notice is dismissed without leave to reapply.

The Landlord's application to request for an Order of Possession based on the One Month Notice is granted.

I grant an Order of Possession to the Landlord **effective on March 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. 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: March 20, 2024

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Residential Tenancy Branch