

## **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

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 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
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 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 and Evidence**

Under section 89 of the Act, I find the Landlord served their Notice of Dispute Resolution Proceeding and Evidence to the Tenant J.T., and Tenant J.B. individually on February 8, 2024, by posting it on the door of the rental unit.

The Landlord submitted completed proof of service forms to demonstrate service to Tenant J.T. and Tenant J.B. Going forwards, I will refer to both Tenants in the singular form.

Under section 90 of the Act, I deem the Tenant received the Landlord's Notice of Dispute Resolution Proceeding and Evidence on February 12, 2024, the third day which does not fall on a holiday or a weekend day after service.

Given the hearing for this application began on February 22, 2024, and was adjourned to February 26, 2024 to proceed by Written Submissions, I will advise the reader that

the Interim Decision and this Decision are to be read together in order to gain the full context.

## **Preliminary Issues**

### **Attendance**

Rule 7.3 of the Rules of Procedure states that the arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

The Tenant did not attend the participatory hearing at the scheduled time. The Tenant did not attend the conference call at any time during the approximately 52-minute hearing on February 22, 2024, even though the conference was open for the participants to join.

Given the Tenant filed an application to cancel the Landlord's 10 Day Notice, I exercise my authority under Rule 7.3 to conduct the hearing in the absence of the Tenant to adjudicate the validity of the 10 Day Notice, and to adjudicate whether this tenancy will continue or end under the Act.

The Landlord declared they were ready to proceed, accordingly I exercise my authority under Rule 7.3 to commence the hearing for the Tenant's application and Landlord's cross application.

### **Written Submissions Page Limit**

During the participatory hearing, the Landlord advised they had crucial information that had not been submitted for the hearing and that information would significantly affect the outcome of the hearing. Specifically, the Landlord stated that Tenant was renting the entire house and not only the basement suite. The Landlord stated they had a text message agreement between the parties for the Tenant to rent the entire house beginning January 1, 2024, for a higher monthly rent in the amount of \$4,500.00.

The Landlord requested for an adjournment of the cross-application hearing to proceed by written submissions. The Landlord was ordered to serve their written submissions to the Tenant and upload the written submissions to the Residential Tenancy Branch Dispute Management System by 4:00 PM on February 26, 2024.

The Tenant was provided with an opportunity to respond to the Landlord's written submissions by 4:00 PM on March 4, 2024. As of the day of this decision, the Tenant did not upload any written submissions to the Dispute Management System in response to the Landlord's written submissions.

The interim decision ordered that the written submissions would be limited to six pages. On review of the Landlord's written submissions, the Landlord has not followed the

instructions in the interim decision because the written submissions contain more than six-pages, and the Landlord has uploaded additional material.

Since I ordered the Landlord to limit the amount of written submissions specified in the interim decision, I will only consider the first six pages of the Landlord's written submissions titled final\_submission.pdf.

## **Issues to be decided**

Does the 10 Day Notice end the tenancy?

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

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

Is the Landlord entitled to an Order of Possession?

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

Is the Landlord entitled to retain all 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 cross application from the Tenant?

## **Background and Evidence**

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

The written tenancy agreement was provided showing that this tenancy began on November 1, 2023, with monthly rent of \$2,200.00, due on the first day of the month, with a security deposit in the amount of \$1,100.00. The Tenant continues to reside at the rental unit. The written tenancy agreement indicated the rental unit the basement suite. The written tenancy agreement indicated that the Tenant is responsible for half of the utility costs.

### **10 Day Notice**

The Landlord testified that the parties agreed over text messages that the Tenant would rent the entire house beginning on January 1, 2024, for an increased monthly rent of \$4,500.00 a month. The Landlord stated that the parties planned to sign a new tenancy agreement, but this did not materialize.

While the parties did not sign a new tenancy agreement, the Landlord affirmed that the Tenant took possession of the whole house on January 1, 2024, and at the time of the hearing, the Tenant continues to occupy the whole house.

To support the fact that the parties had an agreement through text messages, the Landlord's written submissions titled final\_submission.pdf included the agreement.

On the third page of the written submissions, the text messages on December 4, 2023, beginning at 12:24 PM, the Landlord inquires whether the Tenant has discussed renting the whole house with the family, to which the Tenant responded positively, and agreed to rent the whole house.

The Landlord testified they did not receive rent for January of 2024. The Landlord stated the parties had discussions over text message where the Tenant agreed to pay January's rent, but the payment did not materialize.

The Landlord stated they served the 10 Day Notice in person for January 2024's unpaid rent on January 15, 2024. The effective date of the 10 Day Notice is January 25, 2024, and the amount of unpaid rent cited is \$4,500.00.

## **Utilities**

The Landlord testified that they did not upload any evidence to support their claim for utilities. The Landlord stated they did not issue a demand letter to the Tenant for the utility bills.

The Landlord recited the source of the utility bills and claimed the Tenant owed utility costs in the amount of \$756.10.

## **Damage to the Rental Unit**

The Landlord testified they do not have any evidence to support their claim that there is damage to the rental unit. The Landlord affirmed that they just assumed there will be damage and there will be costs in the amount of \$400.00 to fix the damage. The Landlord agreed that this figure is a self-generated estimate.

## **Analysis**

### **Does the 10 Day Notice end the tenancy?**

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

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.

I find that the 10 Day notice was duly served to the Tenant in accordance with section 88 of the Act, and that the Tenant filed their application to dispute the 10 Day Notice within the required time.

I have examined the 10 Day Notice and I find it is in compliance with section 52 of the Act for form and content.

Based on the Landlord's text message evidence, specifically the messages from December 4, 2023, I am satisfied that the parties discussed the idea of the Tenant to take over the whole house beginning January 1, 2024, and for an increase of monthly rent to the amount of \$4,500.00.

I am also satisfied that the Tenant did in fact move in and occupy the whole house beginning January 1, 2024.

However, section 14 of the Act provides that parties may bilaterally amend the tenancy agreement to change the terms of the tenancy agreement.

This is supported by section 1 of the Schedule contained in the Regulation, in which subsection 2 states that any changes to the terms must be agreed to in writing and be initialed by the landlord and the tenant. If a change is not agreed to in writing, and is not initialed by the landlord and tenant, it is not enforceable.

While the Landlord claims they are entitled to unpaid rent in the amount of \$4,500.00, I find that the parties did not amend the tenancy agreement in writing and therefore the parties did not finalize the plan for the Tenant to take over the whole house for an increased monthly rent.

Based on the undisputed testimony of the Landlord, the evidence, and on a balance of probabilities, I find the Tenant did not pay January 2024's monthly rent in the amount of \$2,200.00. Accordingly, I find the Landlord had grounds to serve the 10 Day Notice for unpaid rent.

For the above reasons, the Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent under sections 46 and 55 of the Act is dismissed, without leave to reapply.

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

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent,

and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act.

Based on the finding earlier that the 10 Day Notice is in compliance with section 52 of the Act. I find the Landlord is entitled to a Monetary Order for unpaid rent for January of 2024, in the amount of \$2,200.00.

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

Section 46(6)(b) of the Act states that if the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The Landlord admitted they have not served the Tenant with a written demand for the unpaid utility bills. I find the Landlord has not complied with section 46(6)(b) of the Act and therefore the unpaid utilities cannot be treated as unpaid rent at this time of this hearing.

Based on the Landlord's admission, I find that the Landlord is not entitled to a Monetary Order for unpaid utilities under section 46 of the Act.

### **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.

Given the Tenant's application to dispute the 10 Day Notice was dismissed, I find that the Landlord is entitled to an Order of Possession.

Based on the short length of the tenancy, the amount of unpaid rent, I find that March 25, 2024, is an appropriate date for the end of the tenancy.

The responsibilities of the Landlord, the Tenant, and the tenancy will continue in accordance with the Act until the end of the tenancy on March 25, 2024.

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

Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation
3. The value of the damages or loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

All four points of the above test must be satisfied in order to be awarded compensation.

Based on the Landlord's admission that they are unaware of whether there is damage, and that the \$400.00 claim is just a number they estimated, I find the Landlord does not satisfy the first three points of the four-point test.

Consequently, I find the Landlord is not entitled to a Monetary Order for damage or loss. I dismiss the Landlord's request for a Monetary Order, without leave to reapply.

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

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security deposit of \$1,100.00, plus interest of \$8.94, for a total amount of \$1,108.94, in partial satisfaction of the monetary award.

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

As the Landlord was only partially successful in their application, I find that the Landlord is entitled to recover \$50.00 of the filing fee paid for this application under section 72 of the Act.

**Conclusion**

The Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent under sections 46 and 55 of the Act is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord **effective by 1:00 PM on March 25, 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.

I grant the Landlord a Monetary Order in the amount of **\$2,200.00** under the following terms:

Monetary Issue	Granted Amount
----------------	----------------

a Monetary Order for January 2024's unpaid rent under section 55 of the Act	\$2,200.00
authorization to retain the tenant's security deposit plus interest in partial satisfaction of the Monetary Order requested under section 38 of the Act	-\$1,108.94
authorization to recover the filing fee under section 72 of the Act	\$50.00
<b>Total Amount</b>	<b>\$1,141.06</b>

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.

I make this decision based on the authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 6, 2024

---

Residential Tenancy Branch