

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
- a Monetary Order for unpaid rent under sections 55 and 72 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 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

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

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.

Preliminary Matters

The Landlord sought to increase their monetary claim from \$3500.00 to \$7000.00 to reflect the Tenant's failure to pay \$3500.00 in monthly rent for February 2024, the additional month of unpaid rent waiting for this hearing.

Residential Tenancy Branch Rules of Procedure, Rule 4.2, states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as this was clearly rent that the Tenant would have known about and resulted since the Landlord submitted the application.

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

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 the rent is \$3500.00 per month, and the security deposit is \$1750.00.

Both parties provided copies of the 10 Day Notice. It is signed January 24, 2024, with a move out date of February 4, 2024. It requests \$3500.00 in unpaid rent that was due January 1, 2024.

The Tenant affirms receiving the Notice at the end of January 2024, but cannot remember the exact date. The Landlord affirms posting on the door of the rental unit on January 24, 2024.

Both parties agree that the Tenant has unpaid rent for January and February of 2024.

The Tenant provided photographs of some trees that he affirms were blown partially down in a windstorm sometime around January 10, 2024. He affirms that they are hanging directly over the driveway and are a danger.

The Landlord affirms that the angle of the photographs is deceiving and that the trees are not hanging over the driveway, nor are they endangering anything else. He further affirms that the rental unit is on a 5 acre wooded lot and that the city has restrictions on the removal of trees.

The Tenant confirmed he is withholding rent because of the windblown trees. He also provided a screen shot of text messages to the Landlord's agent indicating this.

Both parties agree that the Tenant informed the Landlord of the windblown trees in January 2024, but the trees remain at they were after the storm.

Analysis

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

The Tenants confirms withholding \$7000.00 of rent, allegedly because of blown down trees. The Tenant affirms these trees were blown down on, or around, January 10, 2024.

If the removal of the trees were emergency repairs, the Act allows, after proper notification to the Landlord, the Tenant to undertake the repairs, and claim reimbursement from the landlord, and if the landlord does not reimburse the tenant as required, the tenant may deduct the cost from rent.

However, as no work has been done to remove the trees, the Tenant is not entitled to withhold rent. Furthermore, under section 33 of the Act, removal of trees is not considered an emergency repair.

Under section 32 of the Act the Landlord has an obligation to provide and maintain the residential property in a state of repair that complies with the health, safety and housing standards required by law.

However, under section 8 of the *Residential Tenancy Regulation*, if the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the Residential Tenancy Act seeking an order of the director for the completion and costs of the repair. It does not allow the withholding of rent.

As the Tenant does not have the right to withhold rent and did not follow the procedures outlined in the Act and regulations, I decline to cancel the Landlord's 10 Day 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 \$7000.00 in unpaid rent for January and February of 2024. Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent under section 55 and 72 of the Act.

Is the tenant entitled to an order for the landlord to make repairs to the rental unit?

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

As the Tenant was not successful in this application, 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.

Conclusion

I grant an Order of Possession to the Landlord **effective at 1:00 PM on March 15, 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 **\$7000.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under sections 55 and 72 of the Act	\$7000.00
Total Amount	\$7000.00

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 tenant's 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: March 1, 2024

Residential Tenancy Branch