

DECISION

Introduction

This hearing dealt with the Tenant's and Landlord's Applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice)

The Landlord applied for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice)
- a Monetary Order for unpaid rent
- authorization to recover the filing fee for this application from the Tenant

Both parties acknowledged being served with each other's hearing packages and evidence in accordance with section 88 of the Act.

Preliminary Matters

The Landlord included \$140.00 for late rent fees under the tenancy agreement as part of their claim for unpaid rent. Late rent fees are not unpaid rent under the Act or regulation, and so cannot be included in a monetary order for unpaid rent. The Landlord did not apply for a monetary order for loss under the Act, regulation, or tenancy agreement.

For these reasons, the Landlord's claim for late rent fees is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable time limits under the Act.

Issues to be decided

Should the Landlord's 10 Day Notice be cancelled?

Is the Landlord entitled to an Order of Possession?

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

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

Facts and Analysis

This tenancy started on July 1, 2022, with a monthly rent of \$1453.00 due the first day of each month, and with a security deposit of \$698.00.

The Landlord testified that the Tenant failed to pay the rent due on January 1, 2024, and February 1, 2024. The Tenant admitted that they failed to pay the rent for these months due to personal financial difficulties. The total unpaid rent owed is \$2906.00.

The Landlord issued the 10 Day Notice to the Tenant on February 5, 2024, and served it by attaching it to the door of the rental unit.

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

Section 26 of the Act says a tenant must pay rent when it is due under the tenancy agreement.

Section 46 of the Act says a Landlord may give a 10 day notice to end tenancy to a tenant on any day after the rent is due if the rent is not paid.

Based on the evidence and testimony of both parties, I find the Tenant breached section 26 of the Act by not paying rent on January 1, 2024, and February 1, 2024. I find the Tenant did not have a valid reason, such as an arbitrator's order, to withhold any rent under the Act.

For these reasons, I find the Landlord had a valid reason to issue the 10 Day Notice under section 46 of the Act. The Tenant's application to cancel the 10 Day Notice under sections 46 and 55 of the Act is dismissed, without leave to reapply.

Is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?

Section 55(1) of the Act says if a tenant makes an application to cancel 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 10 Day Notice meets the requirements for form and content under section 52 of the Act. Therefore, I find that the Landlord is entitled to an Order of Possession under sections 46 and 55 of the Act.

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

Section 55(1.1) of the Act says if a tenant makes an application to cancel a landlord's notice to end a tenancy for non-payment of rent, and the application is dismissed, the arbitrator must grant the landlord a monetary order for the unpaid rent if the notice complies with section 52 of the Act.

I have found that the 10 Day Notice complies with section 52 of the Act. Therefore, I find the Landlord is entitled to a Monetary Order of \$2906.00 for unpaid rent due January 1, 2024, and February 1, 2024.

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

As the Landlord was successful in this application, I find the Landlord is entitled to recover the \$100.00 filing fee for this application from the Tenant under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlord **effective on March 31, 2024, after the Tenant is served this Order**. The Landlord must serve this Order to the Tenant. The Tenant and anyone else occupying the rental unit must move out by **March 31, 2024**.

If the Tenant does not comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Tenant is reminded that the rental unit must be left clean and without damage in accordance with section 37 of the Act. The Landlord is reminded to schedule and complete a move out inspection in accordance with section 35 of the Act.

I find the Landlord is entitled to a Monetary Order of \$2906.00 for unpaid rent due January 1, 2024, and February 1, 2024. I Order the Landlord to retain the security deposit of **\$698.00**, plus interest, in partial satisfaction of this debt. I Order the Tenant to pay the Landlord the balance due of **\$2290.11**.

The Landlord must serve this Order to the Tenant as soon as possible. If the Tenant does not pay, this Order may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

Monetary Issue	Granted Amount
Unpaid rent	\$2906.00
Landlord's filing fee	\$100.00
Security deposit plus interest	-\$715.89
Total Amount	\$2290.11

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 19, 2024

Residential Tenancy Branch