

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) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 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 for the Landlord to provide services or facilities required by law under section 27 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
- 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 Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenants(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 not served to the landlord in accordance with section 88 of the Act. The Landlord allowed the Tenant's copy of the 10 Day Notice to be entered into evidence.

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

At the outset of the hearing the Landlord sought to increase their monetary claim from \$9200.00 to \$11, 800.00 to reflect the Tenant's failure to pay \$2600.00 in monthly rent for March 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

Is the tenant entitled to more time to cancel the landlord's 10 Day Notice?

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 for the landlord to provide services or facilities?

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

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

Facts and Analysis

I have heard all the testimony of the parties but will refer only to what I find relevant for my decision.

Is the tenant entitled to more time to apply to cancel the landlord's 10 Day Notice?

Both parties provided a copy of the 10 Day Notice requesting \$9200.00 that was due on January 15, 2024. It was signed February 5, 2024, with a move out date of February 16, 2024. The Tenant affirms receiving the 10 Day Notice on February 6, 2024.

The Tenant applied for dispute resolution on February 14, 2024, more than the 5 days allowed under the Act. He affirms he was late because he was unable to find the office where he could submit his application.

I find the Tenant's reason does not qualify as an exceptional circumstance as defined in section 66 of the Act and is required by the same section for a time limit to be extended. Therefore, I decline to extend the 5 day limit and dismiss the Tenant's application without leave to reapply.

Should the landlord's 10 Day Notice be cancelled? If not, 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.

Furthermore, both parties agree that the \$9200.00 of unpaid rent requested in the 10 Day Notice remains unpaid. The Tenant affirms withholding rent because of mold in the rental unit but confirms not applying for dispute resolution in regards to this issue.

Section 26 of the Act states 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.

I find the Tenant did not have a right under the Act to not pay the requested \$9200.00 of unpaid rent.

Furthermore, the Tenant affirms not paying the additional \$2600.00 requested for the month after the Landlord served the 10 Day Notice and confirms that it remains unpaid. The Tenant affirms he did not pay this amount because he is looking for new accommodation.

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 \$11,800.00 in unpaid rent. 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 for the landlord to provide services or facilities?

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.

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 at 1:00 PM on April 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 **\$11,900.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under sections 55 and 72 of the Act	\$11,800.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$11,900.00

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.

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 22, 2024

Residential Tenancy Branch