

DECISION

Introduction

The Tenants, by way of application and amendment, seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy for Unpaid Rent signed on February 18, 2024 (the “10 Day Notice”);
- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to ss. 32 and 62 for repairs to the rental unit;
- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities required by the tenancy agreement or law; and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

The Landlord in his own application seeks the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing the 10 Day Notice;
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of the filing fee pursuant to s. 72.

C.O. attended as the Tenant. H.G. attended as the Landlord. The Landlord’s son, A.G., also attended to assist his father as needed, though did not end up participating.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of the Applications and Evidence

The Tenant advises that he served his application materials on the Landlord, though later admitted to not having served his evidence. The Landlord acknowledged receipt of the Tenants’ application and amendment, though denied receipt of any evidence.

Dealing first with the Tenants' application and evidence, I accept that these were received by the Landlord. I find under s. 71(2) of the *Act* that the Landlord was sufficiently served with these documents.

Looking to the Tenants' evidence, Rules 3.1 and 3.14 put a clear expectation that applicants, in this case the Tenants, to serve their evidence on respondents. Indeed, as a basic matter of procedural fairness, applicants cannot expect to rely on evidence in which the respondent was not given notice nor opportunity to review and respond.

As the Tenants' evidence was not served, I find it would be procedurally unfair to review and consider it. Given this, the Tenants' evidence is excluded and shall not be considered by me in this decision.

The Landlord advised having served his application and evidence on the Tenant. The Tenant, upon reviewing those documents received by the Residential Tenancy Branch, confirms that those documents were received and did not raise objection. Accepting this, I find under s. 71(2) of the *Act* that the Tenants were sufficiently served with the Landlord's application materials.

Preliminary Issue – Severing Claims from the Tenants' Application

Rule 2.3 of the Rules of Procedure requires claims in an application to be related to one another. Where claims are not sufficiently related, the arbitrator hearing the matter may dismiss unrelated claims, either with or without leave to reapply.

Hearings before the Residential Tenancy Branch are generally scheduled for one hour. Rule 2.3 of the Rules of Procedure is intended to ensure that matters are dealt with in a timely and efficient manner. This rule also enables parties to focus their submissions on a limited number of issues in dispute given the summary nature of hearings before the Residential Tenancy Branch.

I find that the primary issue in dispute is whether the tenancy will end or continue based on the 10 Day Notice. Indeed, it is the only issue unifying both applications and will be determinative on most of the relief claimed by the Tenants should the notice be upheld.

Looking to the Tenants' application, I find that the following claims are not sufficiently related to whether the 10 Day Notice is enforceable:

- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to ss. 32 and 62 for repairs to the rental unit;
- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities required by the tenancy agreement or law; and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

These claims are hereby dismissed. In the case of the monetary claim and the claim for a past rent reduction, they are dismissed with leave to reapply regardless of the outcome of this decision. Concerning the balance of the claims, the issues they raise are only relevant to ongoing and active tenancies and may be dismissed with or without leave to reapply depending on whether the 10 Day Notice is upheld or cancelled.

The hearing proceeded strictly on the issue of whether the 10 Day Notice is enforceable.

Issues to be Decided

- 1) Should the 10 Day Notice be cancelled? If not, is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to an order for unpaid rent?
- 3) Is the Landlord entitled to the return of his filing fee?

Evidence and Analysis

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

General Background

The parties confirm the following details with respect to the tenancy:

- The Tenants moved into the rental unit on November 1, 2023.
- Rent of \$1,950.00 is due on the first day of each month.
- A security deposit of \$975.00 was paid by the Tenants.

I have been provided with a copy of the tenancy agreement by the Landlord.

1) Should the 10 Day Notice be cancelled? If not, is the Landlord entitled to an order of possession?

A landlord may end a tenancy under s. 46(1) of the *Act* when a tenant fails to pay rent when it is due under the tenancy agreement by serving a notice to end tenancy on the tenant that is effective no sooner than 10-days after it is received.

Under s. 46(4) of the *Act*, a tenant, upon receipt of a notice to end tenancy issued under s. 46 of the *Act*, has 5-days to either pay the overdue rent listed in the notice or file an application to dispute the notice. When a tenant files to dispute a notice to end tenancy issued under s. 46 of the *Act*, the onus for proving that the notice was properly issued rests with the respondent landlord.

Service of the 10 Day Notice and Form and Content

The Landlord advised that he personally delivered the 10 Day Notice on the Tenant on February 18, 2024. The Landlord's evidence contains a proof of service form confirming this. I am also told a 10 Day Notice was sent via registered mail.

The Tenant acknowledges personal receipt though could not recall the date, indicating sometime in late March 2024. I note that the Tenants filed their amendment disputing the 10 Day Notice on February 21, 2024, which would contradict the notice was first received in late March.

I accept that the Tenant likely does not recall specifically when the 10 Day Notice was served. I further accept that the Tenant was likely served in person on February 18, 2024, as supported by the Landlord's testimony and proof of service form. I note that the Tenant acknowledges personal service.

I find that the 10 Day Notice was personally served on the Tenant in accordance with s. 88 of the *Act* and received on February 18, 2024.

As noted above, the Tenants' disputed the 10 Day Notice by way of amendment filed on February 21, 2024. Given this, I find that the Tenants failed to dispute the 10 Day Notice within the 5-day deadline imposed by s. 46(4) of the *Act*.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10 Day Notice. I find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

Unpaid Rent

Both the Landlord and Tenant confirm that the Tenant failed to pay rent for February 2024, March 2024, and April 2024.

The Tenant cited a number of repair issues that he says have not been addressed by the Landlord. The Landlord disputed the repairs were necessary and indicates that he had tradespeople assess if there were any issues.

Section 26(1) of the *Act* sets a clear expectation that tenants must pay rent when it is due whether or not their landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* establishes a limited set of circumstances in which a tenant may deduct money from rent, including:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).

2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

I enquired whether the Tenant withheld rent due to costs incurred for repairs at the residential property. I was told by the Tenant that that was not the case and that he withheld rent due to the Landlord's negligence in undertaking repairs.

I find that the Tenant failed to pay rent and had no lawful reason for withholding rent. As such, I find that the Landlord has proven that the 10 Day Notice was issued in compliance with s. 46 of the *Act*. The notice is valid.

I dismiss the Tenants' application to cancel the 10 Day Notice, without leave to reapply.

Order of Possession

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As that is the case here, I grant the Landlord an order of possession.

Policy Guideline #54 provides guidance on setting the effective date for an order of possession. I note that the hearing, taking place on April 30, 2024, would mean that the order of possession would be effective into May 2024 even if the standard 2-day effective date were chosen. I am further told and accept that the Tenants have minor children, one of whom has disabilities.

In light of these considerations, I make the order of possession effective for 1:00 PM on May 31, 2024.

2) Is the Landlord entitled to an order for unpaid rent?

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement.

Policy Guideline #16, summarizing the relevant principles from ss. 67 and 7 of the *Act*, sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.

3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

As noted above, there is no dispute that rent was unpaid. I find that this was done without lawful reason in breach of the Tenants obligation to pay rent under the tenancy agreement and s. 26(1) of the *Act*. I find that mitigation was impossible here as the Tenants continue to reside within the rental unit.

I permit an amendment to the Landlord's application to seek the increased arrears as contemplated by Rule 7.12 of the Rules of Procedure as the increase could be reasonable anticipated.

Given the order of possession is made effective for May 31, 2024, I grant the Landlord a monetary order for total unpaid rent to the end of the tenancy and do so in consideration of the need to avoid additional claims before the Residential Tenancy Branch. The Tenants rent is due in full on the first and given when this hearing took place on April 30, 2024, the full rent obligation for the Tenants would be triggered regardless.

I grant the Landlord a monetary order for unpaid rent totalling \$7,800.00 (\$1,950.00 x 4), for the months of February to May 2024.

3) *Is the Landlord entitled to the return of his filing fee?*

As the Landlord was successful, I find he is entitled to his filing fee. I order under s. 72(1) of the *Act* that the Tenants pay the Landlord's \$100.00 filing fee.

Conclusion

I dismiss the Tenants' claim disputing the 10 Day Notice, without leave to reapply.

I grant the Landlord an order of possession under s. 55 of the *Act*. I order that the Tenants and any other occupants provide vacant possession of the rental unit to the Landlord by no later than **1:00 PM on May 31, 2024**.

I grant the Landlord an order for unpaid rent and rent for May 2024, totalling \$7,800.00.

I grant the Landlord his filing fee of \$100.00, which shall be paid by the Tenants.

In total, I order under ss. 67 and 72 of the *Act* that the Tenants pay **\$7,900.00** to the Landlord (\$7,800.00 + \$100.00).

Of those claims filed by the Tenant that were severed, I dismiss their claim for monetary compensation and a past rent reduction with leave to reapply. The balance of the claims severed are dismissed without leave to reapply as the tenancy is over.

It is the Landlord's obligation to serve the orders on the Tenants. Should the Tenants fail to comply with the order of possession, it may be enforced by the Landlord at the BC Supreme Court. Should the Tenants fail to comply with the monetary order, it may be enforced by the Landlord at the BC Provincial 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: April 30, 2024

Residential Tenancy Branch