

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's March 3, 2024, 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
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

and the Landlord's March 11, 2024, Cross-Application for Dispute Resolution for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 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**

Neither party disputed service.

### **Issues to be Decided**

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

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

Is the either party entitled to recover their filing fee?

### **Background and Evidence**

The parties submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed on September 11, 2022, indicating a monthly rent of \$6,000.00, due on the first day of each month for a tenancy commencing on September 24, 2022, with a rent reduction to \$5,710.00 effective August 1, 2023.

- The parties agree the tenancy agreement combined the rent owing from the Tenant with the \$800.00 monthly rent owing for another occupant, Cl.
- The parties agree the Tenant provided a security deposit of \$2,400.00 and a pet deposit of \$2,400.00.
- A copy of text messages between the parties discussing the initial terms of the tenancy agreement and amount of rent, indicating the Tenant agreed to pay an additional \$400.00 per month for the first ten months of the tenancy.
- A copy of text messages between the parties from June 2023, where the Tenant disagrees with the rent amount of \$5,710.00 or at least the timing of when they were set to begin paying that amount.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) dated March 3, 2024, for \$4,800.00 in unpaid rent. The 10 Day Notice provides that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of March 13, 2024.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) dated April 6, 2024, for \$4,950.00 in unpaid rent. The 10 Day Notice provides that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of April 16, 2024.
- A copy of the Tenant's March 1, 2024, notice to end tenancy effective March 31, 2024, indicating the Tenant's rent payment for March 2024 was \$100.00.
- A copy of the Tenant's text message extending their move out date to April 7, 2024.
- The parties agree the previous decision in this matter dated March 12, 2024, awarded the Tenant \$1,561.76 for overpayment of rent and one water bill.

## **Analysis**

### **Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?**

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.

Despite the previous decision in this matter, the parties continue to disagree about the correct amount of rent owing. I have reviewed all documentary evidence and I find that the Tenant was obligated to pay the monthly rent in the amount of \$4,800.00.

On a balance of probabilities, it appears the Landlord drafted the tenancy agreement to include an embedded rent increase of \$110.00 (approximately 2% of \$5,600.00) to begin on August 1, 2023, after the Tenant's payments of the agreed additional \$400.00 per month for ten months ended. A text message from the Tenant on June 9, 2023, indicates the Tenant's agreement to the amount of the rent increase, but not the date it was set to begin. The Tenant's message says it shouldn't take effect until October 1, 2023. The conclusion of that conversation is not visible in evidence.

The Tenant subsequently disputed the \$100.00 increase on their portion of rent. Under Policy Guideline 37 B, even if a rent increase is agreed, it must be in writing, clearly set out the amount of the increase, and a notice of rent increase must be issued three months before the increase is to go into effect. In addition, a rent increase cannot take effect sooner than 12 months after the rent was initially set. I find the Landlord did not meet these notice and timing requirements under the Act to impose an agreed rent increase.

I do not accept the Landlord's suggestion that the parties negotiated the amount of rent verbally at the time of signing the tenancy agreement. If that was the case, it implies the Landlord agreed to receive \$290.00 per month for ten months as opposed to the \$400.00 that was initially agreed.

Therefore, based on the reasoning above, in addition to the text messages between the parties, the tenancy agreement itself, and the Tenant's notes about the agreement, I find the rent owing under the agreement is \$4,800.00 per month.

In accordance with sections 88 and 90 of the Act, I find that the 10 Day Notice was served on March 3, 2024, in person, and was received by the Tenant on that date.

Although the Tenant was awarded \$1,561.76 by my colleague Arbitrator in a decision dated March 12, 2024, even if that amount was authorized to be deducted from rent, I find the Tenant would still owe rent for March 2024. I find the Tenant paid \$100.00 on March 1, 2024, towards rent owing for March 2024.

I accept the evidence before me that the Tenant failed to pay the rent owed **in full** within the five days granted under section 46(4) of the Act. I find the Tenant did not present a valid dispute to the 10 Day Notice because my colleague Arbitrator determined the Tenant validly agreed to pay the additional \$400.00 rent per month for the first ten months of the tenancy agreement.

Although the Tenant testifies that they vacated the rental unit yesterday, the Landlord requests an order of possession.

I will grant the Landlord's request because I find that the Landlord is entitled to an Order of Possession based on the 10 Day Notice under sections 46 and 55 of the Act.

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

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Although the Tenant says they vacated the rental unit on April 7, 2024, the Landlord is seeking the full month of rent for April 2024.

Under Policy Guideline 3, compensation is meant to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. The landlord who issued the notice to end tenancy for non-payment of rent could recover any loss of rent suffered for the next month. That is because a notice given by the tenant mid month would not end the tenancy until the end of the subsequent month.

In addition to the 10 Day Notices served in this matter, on March 1, 2024, the Tenant provided a notice to end the tenancy effective March 31, 2024. Then, on March 31, 2024, the Tenant informed the Landlord that they would not vacate the rental unit until April 7, 2024.

I find if the Tenant's notice was provided to the Landlord on March 1, 2024, the earliest date the Tenant could have ended the tenancy was April 30, 2024. I find the Landlord did not agree to end the tenancy effective April 7, 2024.

Therefore, I find that the Landlord has established a claim for unpaid rent owing for March and April 2024.

The Landlord also claims \$25.00 for March and April in late fees. Section 7(1)(d) of the Residential Tenancy Regulation allows an administration fee of not more than \$25.00 for late payment of rent. Policy Guideline 4 notes a clause in a tenancy agreement providing for the payment by the tenant of a late payment fee will be a penalty if the amount charged is not in proportion to the costs the landlord would incur because of the late payment.

I find that although cheques were not returned by a financial institution, the fee of \$25.00 is a reasonable cost for the administration required when a tenant does not pay rent on time, and the tenant agreed to this fee in the tenancy agreement.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent and late fees under section 67 of the Act in the amount of \$9,550.00 as follows.

Date	Amount owing	Calculation
March 1, 2024	\$4,725.00	\$4,800.00 rent - \$100.00 payment + \$25.00 late fee
April 1, 2024	\$4,825.00	\$4,800.00 rent + \$25.00 late fee
<b>TOTAL</b>	<b>\$9,550.00</b>	

Under section 72 of the Act, I order the Landlord to retain the Tenant's pet and security deposits plus interest of \$129.50, totalling \$4,929.50 in partial satisfaction of this monetary award.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent and late fees under section 67 of the Act, in the amount of **\$4,620.50**.

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

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 two (2) days after service of this Order on the Tenant**. Should the Tenant 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.

Under section 72 of the Act, I order the Landlord to retain the Tenant's pet and security deposits plus interest, totalling \$4,929.50 in partial satisfaction of the monetary award.

I grant the Landlord a Monetary Order in the amount of **\$4,720.50** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent and late fees under section 67 of the Act	\$4,620.50
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$4,720.50</b>

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 does not impact the validity or enforceability of the monetary order previously awarded to the Tenant in the decision dated March 12, 2024. The parties are at liberty to offset any amounts owing.

Although the deposit has been conclusively dealt with in this decision, the Landlord maintains the right to claim for compensation under sections 32, 37, and 67 of the Act.

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 9, 2024

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Residential Tenancy Branch