



## **DECISION**

### **Introduction**

This hearing dealt with an application filed by both the Tenant and the Landlord pursuant to 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) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act

The Landlord applied for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent pursuant to section 67 of the Act
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72 of the Act

Tenant TK attended the hearing for the Tenant.

MF attended the hearing as agent for the corporate Landlord.

### **Preliminary Matters**

During the course of the hearing and based on the testimony presented, I became concerned about the health and well-being of the Tenant. For this reason, **I ORDER** that a copy of my Decision be emailed to Interior Health as a Designated Agency under Part 3 of the Adult Guardianship Act for the Designated Agency to determine if the Tenant

named in this decision is in need of support and assistance. I have included the email address to which this decision is ordered to be sent on the cover page of this decision.

During the hearing MF testified that the Landlord is a corporation, and they are the owner the corporation. Based on this testimony, I have amended the Tenant's application to add the corporate Landlord as the Landlord and remove MF.

## **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

As both parties were in attendance, I confirmed that there were no issues with service of the parties' Proceeding Packages and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other's application materials.

## **Issues**

Is the Tenant entitled to more time to cancel the Landlord's 10 Day Notice?

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 authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested?

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

## **Background and evidence**

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

Evidence was provided showing that this tenancy began on April 20, 2002, with a previous owner of the building. MF testified that the corporate landlord purchased the building in 2013. MF testified that as of January 1, 2024, monthly rent was increased from \$820.00 to \$848.70 based on the most recent rent increase. The Tenant testified that they are not sure what the current rent amount is as they are not aware what the allowable increase is. The Tenant paid a security deposit in the amount of \$247.50 which the corporate landlord continues to hold in trust. A copy of the written tenancy agreement is submitted into evidence.

The Landlord testified that they served the Tenant with the 10-Day Notice on March 9, 2024, by attaching a copy to the door of the rental unit. The Tenant acknowledged

receipt of the 10-Day Notice attached to their door but was unsure if they received the 10-Day Notice on March 9<sup>th</sup> or shortly thereafter. The Tenant confirmed that they were served with all three pages of the 10-Day Notice.

The 10-Day Notice is submitted into evidence and indicated that it was issued because the Tenant failed to pay rent in the amount of \$13,650.99 that was due on March 1, 2024.

The Tenant is seeking an extension of the time limit to apply to cancel the 10-Day Notice. The Tenant testified that shortly after having been issued the 10-Day Notice they were hospitalized due to mental health concerns and unable to make their application until they received assistance. The Tenant is seeking cancellation of the 10-Day Notice and testified that they want to continue to reside in the rental unit.

The Landlord is seeking an Order of Possession based on the 10-Day Notice.

The Landlord testified that 10-Day Notice was issued because the Tenant has not paid rent in full for many years. The Landlord directed me to their evidence which includes a breakdown of the outstanding rent.

The Landlord testified that between January 2021 and July 2023, the Tenant failed to pay rent 13 times. The Landlord testified that that they have tried to work with the Tenant and hired the Tenant to complete work at the property.

The Landlord testified that they deducted \$420.00 from the \$820.00 in rent that the Tenant owes for November 2023, \$400.00 from the rent the Tenant owes for December 2023, and \$200.00 from the rent the Tenant owes for January 2024, based on the cleaning the Tenant completed at the building.

The Landlord testified that the Tenant paid \$203.01 toward rent via e-transfer on January 29, 2024 and \$855.00 toward rent by e-transfer on March 26, 2024.

The Landlord testified that the Tenant has not paid any rent for the month of April 2024. The Landlord testified that the total rent arrears including April 2024 is \$13,398.67. The Landlord is seeking a monetary order for unpaid rent.

In response to the Landlord's testimony, the Tenant testified that they got behind on rent during Covid. The Tenant testified that they made an application for assistance to pay their rent, but their application was lost. The Tenant testified that they re-applied and are currently waiting on approval for their application. The Tenant testified that they do not dispute that rent is outstanding, but they are not confident in the amount of outstanding rent calculated by the Landlord.

## Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

The Landlord testified that when they issued the 10-Day Notice, rent was outstanding in the amount of \$13650.99. The Tenant conceded that rent is outstanding but did not agree with the Landlord as to how much rent was outstanding. However, based on the consistent evidence of the parties that rent was outstanding at the time the 10-Day Notice was issued, I find that the 10-Day Notice was given for a valid reason, namely, the non-payment of rent.

The Tenant acknowledged that they received the 10-Day Notice which was posted to the door of the rental unit but could not confirm if they received it on March 9, 2024, or shortly thereafter. I accept the Landlord's testimony and documentary evidence and find that the 10-Day Notice was served to the Tenant by posting it to the door of the rental unit on March 9, 2024. Based on section 90 of the Act a document served in accordance with section 89 of the Act is deemed to be received if given or served by attaching to a door, on the third day after it is attached. In this case, the Tenant is deemed to have received the 10-Day Notice on March 12, 2024, in accordance with section 90(c) of the Act.

The 10-Day Notice lists an effective move out date of March 20, 2024. However, based on section 53(2) of the Act, I correct the effective date of the Notice to March 22, 2024, ten days after the Tenant received the Notice. I have reviewed the 10-Day Notice and find that it meets the form and content requirements of section 52 of the Act.

Section 46(4)(b) allows a tenant within five days of receiving the 10-Day Notice to dispute the Notice by making an application for dispute resolution. In this case, the Tenant did not make an application for dispute resolution within the required five days and therefore, they are seeking an extension of the time limit to dispute the 10-Day Notice.

Section 66(3) of the Act states that the director **must not** extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice. Residential Tenancy Policy Guideline 36 discusses the Director's authority to extend a time limit established by the Act and explains that even where the tenant can establish grounds that there were exceptional circumstances,

once the effective date of the Notice to End Tenancy has passed, there can be no extension of time to file for arbitration.

Records at this office confirm that the Tenant filed an application disputing the 10-Day Notice on March 24, 2023, which is a date that is beyond the corrected effective date of the notice, March 22, 2023. Based on section 66(3) of the Act and Policy Guideline 36, I find that the Tenant is not entitled to an extension of the time limit to dispute the 10 Day Notice. For that reason, the Tenant's application to dispute the 10-day Notice is dismissed without leave to re-apply.

Section 55(1) of the Act requires me to grant the Landlord an Order of Possession if a tenant makes an application for dispute resolution to dispute a Landlord's notice to end a tenancy and the notice (a) complies with section 52 *[form and content of notice to end tenancy]*, and (b) the director, during the dispute resolution proceeding, dismisses the Tenant's application.

Based on the foregoing, the Landlord is granted an Order of Possession under section 55(1) of the Act that will be effective not earlier than May 15, 2024 at 1:00 p.m. A copy of the Order of Possession is attached to this Decision and must be served on the Tenant.

Since the-application relates to a section 46 notice to end tenancy, the Landlord is also entitled to an order for unpaid rent under section 55(1.1) of the Act.

The Landlord is seeking unpaid rent in the amount of \$13,398.67 for rent they allege has not been paid since 2021. However, section 7(2) of the Act requires that a party who claims compensation for damage or loss that results from the other party's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. In this case, I am not satisfied that the Landlord did whatever was reasonable to minimize their loss. There is no evidence before me support that the Tenant has previously been issued a 10-Day Notice for the non-payment of rent. Rather the Landlord allowed the amount of outstanding rent to grow significantly over time. For this reason, I do not find it reasonable to grant the Landlord a Monetary Order for the amount claimed. Rather, I find it reasonable to grant an order for rent outstanding since January 1, 2024.

I accept the Landlord's evidence that rent increased from \$820.00 to \$848.70 in January 2024. I also accept that the Tenant made two payments toward rent since January for a total amount of \$1,058.01 and that the Landlord reduced January's rent by \$200.00

based on the work the Tenant completed for the Landlord. Therefore, I find that rent since January 2024 is outstanding in the amount of \$2,136.79 as set out below.

Rent Due January to April 2024 (\$848.70 x 4)	\$3,394.80
Rent Paid January \$203.01	-\$203.01
Rent Paid March	-\$855.00
Amount Deducted by Landlord	-\$200.00
<b>Total Rent Owing</b>	<b>\$2,136.79</b>

Based on the foregoing, I find the Landlord has established a monetary claim in the amount of \$2,136.79 for outstanding rent.

The Landlord continues to hold the Tenant's security deposit of \$247.50 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain the Tenant's security deposit plus the accrued interest in partial satisfaction of the monetary order as set out below.

### **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 as set out below.

### **Conclusion**

The Tenant's application is dismissed in its entirety, without leave to reapply.

The Landlord is granted an order of possession which will be effective not earlier than May 15, 2024 at 1:00 p.m. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I issue a Monetary Order in the Landlord's favour in the amount of \$1,973.18 as follows:

<b>Item</b>	<b>Amount</b>
Outstanding Rent January to April 2024	\$2,136.79
Security Deposit (\$247.50)	-\$247.50
Accrued Interest on Security Deposit	-\$16.11

Filing Fee	\$100.00
<b>Total Monetary Order</b>	<b>\$1,973.18</b>

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 is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: May 2, 2024

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Residential Tenancy Branch