

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) under sections 46 and 55 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The hearing also dealt with the Landlord's Application for Dispute Resolution under 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
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under 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 under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

BS attended the hearing for the Tenants.

TH also attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord was served on April 14th, 2024, by pre-agreed email. The Landlord acknowledged receiving the Notice of Dispute Resolution via email, but stated

that the record was incomplete and that she had to contact the RTB to receive all the materials.

I find that the Tenants were served on April 23rd, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service. In addition, the Landlord sent the Dispute Resolution Package by email to the Tenants and their advocate BS.

Service of Evidence

The Tenants stated that the Landlord's evidence had not been served to them, but they had received it from the RTB. The Tenants consented to the admission of the Landlord's evidence.

Preliminary Matters

BS provided the correct legal name for the Tenant AFS. The application has been correspondingly amended.

Issues to be Decided

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

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Is the Tenant entitled to an order setting conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

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

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Is the Landlord entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Is the Landlord entitled 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 December 10th, 2022, with a monthly rent of \$2,900.00, due on tenth day of each month, and with a security deposit in the amount of \$1,450.00.

TH testified that the Tenants would sometimes pay their rent late. In March, she didn't receive any payment or message from the Tenants letting her know when they would be paying rent. As a result, she attempted to phone the Tenants on March 13th, but found the phone number was out of service.

TH testified that she then asked a friend to go and check the rental unit, and that the friend only left contact information and a request for payment at the door.

On March 15th, TH attempted to contact the Tenants again. On March 16th, the Tenants replied, saying that they were out of the country, their bank account was frozen, and they needed more time to pay rent.

TH testified that she served a 10 Day Notice on April 4th, by posting it to the door of the rental unit.

BS testified that on the morning of March 17th, the door camera to the rental unit was removed by a young-ish man. The Tenants believed this to be an attempt by the Landlord to force them from the unit. BS testified that the tenants felt insecure and experienced nightmares.

BS testified that the Tenants rented storage, got a hotel, and then rented a new place, moving to the new location on March 31st, 2024.

BS testified that the Tenants had been the subject to a noise complaint from a neighbour, and submitted that the Landlord had sided with the neighbour. Text messages from the Landlord to the neighbour were cited by BS in which they discuss the Tenants in negative terms.

The Tenants also submitted emails and text messages from the Landlord in which the Landlord indicates that she intended her parents to move into the rental unit, and complains of financial hardship.

Analysis

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

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. If the tenant(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

I find that the 10 Day Notice was deemed served to the Tenant on April 9th, 2024, and that the Tenant had until April 15th to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenants disputed the Notice on April 8th, within the statutory time permitted.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has shown sufficient grounds to validate the 10 Day Notice and obtain an end to this tenancy.

I accept the Landlord's uncontradicted testimony that the Tenant has not paid rent for March 2024. The Tenants have not advanced any argument that they were entitled to withhold rent.

I have inspected the Notice and find that it complies with section 52 of the Act.

Therefore, the Tenant's application is for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent under sections 46 and 55 of the Act is dismissed.

For the above reasons, the Landlord's application for an Order of Possession based on a 10 Day Notice under sections 46 and 55 of the Act is granted.

As the Tenants are currently living in a different location, I will grant an Order of Possession effective two days after service of the Order on the Tenants.

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenant has not established a claim for damage or loss under the Act, regulation or tenancy agreement.

The Tenants' claim rests on the attribution to the Landlord of the March 17th event where the Tenant's door camera was disconnected. Although there was clearly some

tension between the Tenants and the Landlord, there is no direct evidence linking the Landlord to the event. And while the Tenants say they vacated the property after the incident, this could not be anticipated, and it is unclear what reason the Landlord would have for taking such a step. At the time of the March 17th incident the Landlord had a legal basis to issue a 10 Day Notice, and eventually did so. Considering the whole of the evidence, I find that the Landlord did not cause the March 17th event.

I therefore dismiss the Tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, without leave to reapply.

Is the Tenant entitled to an order setting conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

These claims are related to the same March 17th event described above. As I have found that the Landlord is not responsible for that event, these claims also are dismissed, without leave to reapply.

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.

Based on the evidence before me, I find that the Landlord has established a claim for unpaid rent owing for March and April of 2024.

I accept the Landlord's uncontradicted testimony that no rent was paid for March and April of 2024.

Although the Tenants say that they moved into a new residence on March 31st, 2024, they requested the cancellation of the 10 Day Notice and have not given notice to end the tenancy. As a result, April rent was payable on April 10th.

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 under section 67 of the Act, in the amount of \$5,800.00.

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Is the Landlord entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

The tenancy has not ended, and the Landlord has not ascertained exactly what damage has occurred, nor have any repairs or other work been done and the costs incurred. These applications are therefore premature, and I dismiss them with leave to reapply.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

I have found that the Landlord is entitled to a Monetary Order in relation to unpaid rent in excess of the security deposit. Under section 72 of the Act, I have discretion to order a deposit to be set off against any award, and I find that in the current circumstances, and in light of the Landlord's request, it is just and convenient to do so.

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security damage deposits of \$1,450.00, in partial satisfaction of the monetary award.

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

As the Landlord was largely successful in her 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 from the Tenant.

Conclusion

I grant an Order of Possession to the Landlords effective two (2) days after service of this Order on the Tenants. Should the Tenants 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.

The Tenants' application for cancellation of the Landlord's Ten Day Notice under section 49 of the Act is dismissed, without leave to reapply.

I grant the Landlord a Monetary Order in the amount of **\$4,450.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$5,800.00
authorization for the Landlord recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00

authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act	-\$1,450.00
Total Amount	\$4,450.00

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.

The Tenants' application for a Monetary Order for damage or loss under the Act, regulation or tenancy agreement is dismissed, without leave to reapply.

The Tenants' application for an order setting conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act is dismissed, without leave to reapply.

The Tenants' application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed, without leave to reapply.

The Landlord's application for a Monetary Order for damage to the rental unit or common areas is dismissed, with leave to reapply.

The Landlord's application for a Monetary Order for damage or loss under the Act, regulation or tenancy agreement is dismissed, with leave to reapply.

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 29, 2024

Residential Tenancy Branch