

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Landlord and the Tenant under the *Residential Tenancy Act* (the "Act").

The Landlord's Application for Dispute Resolution, filed on April 16, 2024, is 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 retain the Tenant's security deposit under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenant's Application for Dispute Resolution, filed on April 24, 2024, is 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 regarding the Tenant's dispute of a rent increase by the Landlord under section 41 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

Advocate S.M. of R.T.C., and Landlord G.K. attended the hearing for the Landlord.

K.C.S. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

I find that the Landlord acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

Service of Evidence

The Tenant acknowledged service of the Landlord's evidence and I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

The Landlord acknowledged service of one package of the Tenant's evidence, and I find that the first package of the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act. The Tenant sent a second package of evidence to the Landlord on May 14, 2024, and the Landlord's Agent testified that they did not have time to review it prior to the hearing.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states that the applicant's evidence must be received by the respondent and the Residential Tenancy Branch not less than 14 days before a hearing. Rule 3.17 provides an exception to this rule if the applicant can show that it is new and relevant evidence that was not available at the time that their application was made or when they served and submitted their evidence.

The Tenant's second package of evidence contained text messages and pictures from during the tenancy. The Tenant testified that this evidence was on an old phone which they had trouble accessing when they sent their original evidence package. I find that this evidence was available at the time they served the other evidence on the Landlord. While I am sympathetic to the Tenant's difficulties in accessing this evidence, it would be unfair and prejudicial to rely on it when the Landlord had received it only two days before the hearing and had not yet reviewed it. Therefore, I find that this evidence is inadmissible, and I will not rely on it for my decision.

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 Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to retain the Tenant's security deposit?

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

Is the Tenant entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord?

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

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

Is the Landlord or the Tenant entitled to recover the filing fee for the other?

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 June 2022. When the tenancy began the rent was \$1,650.00, due on the first day of the month with a security deposit of \$825.00. The rental unit is a basement suite.

The Landlord sent a text message to the Tenant in on December 18, 2024, telling her rent would increase from \$1,650.00 to \$1,750.00 per month, starting in February 2024. A notice of rent increase (RTB form 7) was not served.

The Tenant paid \$1,750.00 in February and March.

The Landlord sent a 10 Day Notice to the Tenant on March 15, 2024, by registered mail, which is deemed received on March 20, 2024, and the Tenant paid the amount listed on the Notice on March 21, 2024.

The Tenant did not pay any rent in April 2024 and has not paid rent in May 2024. The Tenant does not dispute that she has not paid rent. The Landlord issued a 10 Day Notice on April 2, 2024, claiming that the Tenant owed \$1,750.00, it was sent by registered mail.

The Tenant testified that there was a severe ant infestation in the rental unit. She stated that she informed the Landlord of this issue, and they did nothing to fix it. She and her boyfriend used traps and spray to take care of the infestation as well as painted over holes to prevent the ants from getting in. The Tenant described numerous ants all over the rental unit and climbing up the walls.

The Tenant testified that the ant infestation caused her a lot of stress. In addition, she had to throw out food and do extra laundry because of all the ants. The Tenant testified that it was really bad for about nine months. She stated that ants would come out everywhere even when the place was spotless.

The Landlord testified that the rental unit was very messy, and the mess attracted the ants. The Landlord stated that the Tenant volunteered to take care of the ant problem herself. The Landlord did not fix this issue because she believed the Tenant was taking care of it. The Landlord stated that the Tenant did not provide her with any receipts for her costs in dealing with the ants, but she would have reimbursed the Tenant if she had received the receipts.

The Tenant testified that the Landlord insisted on inspecting the rental unit about every 15 days. The Landlord denied this and stated that they had only inspected the rental unit once after giving the Tenant 24 hours' notice.

The Tenant testified that she had repeatedly asked the Landlord to give her a copy of the tenancy agreement, but the Landlord refused to do so. The Landlord testified that there was no written tenancy agreement. The Tenant stated that she needed the tenancy agreement for some social programs, and she could get into trouble for not having provided it already.

The Tenant testified that she did not pay rent in April because she was having financial trouble, she wanted the ants taken care of, and she wanted a copy of the tenancy agreement.

The Tenant said she has written a cheque for April rent in the amount of \$1,707.75 dated April 1, 2024, but has not given it to the Landlord.

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 have reviewed the 10 Day Notice, and it conforms with section 52 of the Act.

I find that the 10 Day Notice sent by registered mail to the Tenant on April 2, 2024, is deemed to have been received on April 7, 2024. The Tenant had until April 12, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenant applied to cancel the 10 Day Notice on April 24, 2024, which is past the required time. The Tenant did not apply for more time to dispute the 10 Day Notice and did not provide a reason for not disputing it within 5 days. The Tenant is conclusively presumed to have accepted the end of this tenancy.

Therefore, the Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under section 46 of the Act is dismissed without leave to reapply.

Under section 55(1) if the Landlord's notice to end tenancy complies with s. 52 of the Act, which it does, then director must grant the Landlord an Order of Possession if the

Landlord's Notice is upheld during the dispute resolution proceedings. I have upheld the 10 Day Notice. Accordingly, the Landlord is granted an Order of Possession.

As the effective date stated on the 10 Day Notice has already passed, I issue an Order of Possession effective 14 days after service upon the tenant. The Tenant testified during the hearing that she lives in the rental unit with her child. I find that it would not be appropriate in these circumstances to grant the Order of Possession for 7 days given the impact that could have on the child.

Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

As will be discussed below, I set the amount of rent at \$1,650.00 per month. The Tenant failed to pay rent for April and May. The Landlord is entitled to an order for \$3,300.00 for the unpaid rent.

Is the Landlord entitled to retain the Tenant's security deposit?

Section 72(2)(b) of the Act states that if there is an amount owing from a tenant to a landlord, an arbitrator may deduct that amount from a security or pet deposit due to the tenant. In accordance with the offsetting provisions of s.72 of the Act, the Landlord may retain the Tenant's \$825.00 security deposit in partial satisfaction of the monetary order.

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

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act establishes 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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. The applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation, or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The Tenant claims the Landlord failed to address the ant infestation and should compensate the Tenant for the money she spent getting rid of the ants, and also compensate her for her stress caused by the ant infestation. The Tenant also claimed they completed other repairs to the property and were not compensated for their time and gas.

The Tenant did not submit any receipts for her costs in addressing ants and did not provide details with respect to how much time she spent addressing the ants, or time spent on any other repairs. The Tenant did notify the Landlord of the ant infestation. The Landlord has an obligation under section 32 of the act to ensure that she provides and maintains the rental unit in a state of decoration and repair that “complies with the health, safety and housing standards required by law”, and “having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

Though the Tenant agreed to address the ant infestation, I find that the Landlord was obligated to ensure that the rental unit was suitable for occupation by a tenant. The Landlord’s testimony was that she had only inspected the rental unit once. I find that the Landlord’s inspections of the rental unit were insufficient. I find that the Landlord breached section 32 of the Act by not investigating and ensuring the ant infestation was properly dealt with.

Under Policy Guideline 16 “an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward...nominal damages are a minimal award [that may be granted] where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.”

I find that the Tenant is entitled to nominal damages of \$100.00 for compensation for the ant infestation.

The Tenant also claimed that the Landlord failed to provide her with a copy of the tenancy agreement despite repeated requests. Under section 13 of the Act, a landlord must prepare in writing every tenancy agreement. The Tenant stated that she requires the Tenancy Agreement for some programs that she is on.

The Landlord breached section 13 of the Act by refusing to prepare and provide a copy of the tenancy agreement to the Tenant. Under Policy Guideline 16 as above, I award nominal damages to the Tenant for this breach in the amount of \$100.00.

Is the Tenant entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord?

Section 43 of the Act establishes that a Landlord may impose a rent increase only up to an amount calculated in accordance with the regulations, ordered by an Arbitrator, or agreed to in writing by the Tenant. I find that the Landlord has raised the rent from \$1650.00 to \$1,750.00 in 2024. The maximum allowable increase for 2024 in accordance with the regulations is 3.5%. I find that 3.5% of \$1,650.00 is \$57.75, however the Landlord increased the rent by \$100.00. Therefore, I find that the Landlord has not increased the rent in accordance with the regulations.

The Tenant did pay the increased rent in February and March, but there is no written agreement before me wherein the Tenant agrees to the increase in rent.

Further the Landlord did not comply with the requirements of section 42(2) and 42(3) which stipulate that A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase and the notice must be in the approved form.

Thus, I find that pursuant sections 42(2), 42(3) and 43 the rent increase effective February 1, 2024, is null and void. Therefore, monthly rent is \$1,650.00 as specified in the tenancy agreement.

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

Given that this tenancy is ending, this issue is moot. I dismiss this application without leave to reapply.

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

Given that this tenancy is ending, this issue is moot. I dismiss this application without leave to reapply.

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

Each party was partly successful in their application, so I decline to award the filing fee to either party.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$2, 075.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act (2x \$1,650.00	\$3,300.00
Less the overpayments of rent made by the Tenant (2X\$100.00)	-\$200.00
Landlord retains Security Deposit under section 72 of the Act.	-\$825.00
Tenant' s Nominal Damages for Ants under Section 67 of the Act.	-\$100.00
Tenant's Nominal Damages for Landlord refusal to provide the Tenancy Agreement under section 67 of the Act.	-\$100.00
Total Amount	\$2,075.00

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.

I grant an Order of Possession to the Landlord **effective 14 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.

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 31, 2024

Residential Tenancy Branch