

## **DECISION**

### **Introduction**

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

The Tenant applied for:

- an order to suspend or set conditions on the Landlord's right to enter the rental unit

The Landlord applied for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice)
- a Monetary Order for unpaid rent
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested
- authorization to recover the filing fee for this application from the Tenant

The Landlord acknowledged being served with the Tenant's hearing application sent by registered mail on May 19, 2024. The Tenant confirmed they did not provide any documentary evidence in support of their application.

The Tenant acknowledged being served with the Landlord's hearing package and evidence sent by registered mail on May 16, 2024.

### **Preliminary Matters**

At the outset of the hearing the Landlord sought to increase their monetary claim from \$7905.00 to \$10,540.00 to reflect the Tenant's failure to pay \$2635.00 in monthly rent for June 2024, the additional month of unpaid rent waiting for this hearing.

*Residential Tenancy Branch Rules of Procedure*, Rule 4.2, states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I allow the amendment as this was clearly rent that the Tenant would have known about and resulted since the Landlord submitted the application.

## **Issues to be Decided**

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

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 Landlord entitled to a Monetary Order for money owed or compensation 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?

## **Facts and Analysis**

This tenancy began on January 10, 2024, with a monthly rent of \$2635.00, due on the tenth day of the month, with a security deposit of \$1317.50.

Both the Landlord and Tenant gave affirmed testimony that the Tenant has not paid rent for the months of March, April, May, and June 2024. The parties agreed that the total unpaid rent is \$10,540.00. The Landlord provided the Tenant rent ledger as evidence to support this claim.

The Landlord issued the 10 Day Notice on May 1, 2024, and served it to the Tenant in person. The Tenant acknowledged receiving the Landlord's 10 Day Notice. The Tenant did not pay the rent arrears after receiving the 10 Day Notice. The Tenant did not pay the rent due June 10, 2024.

The Tenant testified that they lost their employment and have been facing significant financial difficulties. The Tenant did not provide any testimony about any reason they may have under the Act to withhold rent. The Tenant did not provide any testimony about unlawful entry to the rental unit 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?**

Section 70(1) of the Act says an arbitrator may suspend or set conditions on a landlord's right to enter a rental unit if satisfied that the landlord has entered, or is likely to enter, the rental unit without providing the required written notice under section 29 of the Act.

The Tenant did not provide any testimony about unlawful entry to the rental unit by the Landlord, or any concern that the Landlord may enter the rental unit without written notice. The Tenant did not provide any documentary evidence in support of this claim.

Therefore, the Tenant's application for an order to suspend or set conditions on the Landlord's right to enter the rental unit is dismissed, without leave to reapply.

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

Section 46 of the Act says a landlord may issue a 10 day notice to end tenancy on any day after the rent is due if the rent is not paid. A tenant who receives a 10 day notice may cancel the notice by paying the rent arrears within 5 days of receiving the notice.

Section 55(2) of the Act says a landlord may apply for an order of possession of a rental unit if a notice to end tenancy has been issued to the tenant, and the tenant has not applied to dispute that notice.

Based on the evidence and testimony of both parties, I find the Tenant failed to pay the rent from the months of March, April, May, and June 2024. I find the Landlord had a valid reason under section 46 of the Act to issue the 10 Day Notice.

Therefore, I find the Landlord is entitled to an Order of Possession under sections 46 and 55 of the Act.

The Landlord agreed during the hearing to extend the 7 day minimum period for the Order of Possession to June 30, 2024.

### **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.

Section 55(1.1) of the Act says if the arbitrator finds the rent is unpaid, and upholds the landlord's 10 day notice, the arbitrator must grant a monetary order for payment of the unpaid rent.

Based on the evidence and testimony of both parties, I find the Tenant failed to pay the rent from the months of March, April, May, and June 2024. I find the total amount of unpaid rent is \$10,540.00. I find the Tenant did not have any valid reason under the Act to deduct any amount from their rent.

Therefore, I find the Landlord is entitled to a Monetary Order of \$10,540.00 for unpaid rent under section 55(1.1) of the Act.

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

Section 72 of the Act says an arbitrator may order that the tenant's security deposit be applied to pay any amount due to the Landlord.

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security deposit of \$1317.50, plus interest, in partial satisfaction of the monetary award for unpaid rent.

**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 by 1:00pm on June 30, 2024, after service of this Order on the Tenant.** The Landlord must serve this Order to the Tenant. The Tenant and anyone else occupying the rental unit must move out by 1:00pm on June 30, 2024.

If the Tenant does not comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

The Tenant is reminded that the rental unit must be left clean and without damage in accordance with section 37 of the Act. The Landlord is reminded to schedule and complete a move out inspection in accordance with section 35 of the Act.

I grant the Landlord a Monetary Order of \$10,640.00 under sections 55(1.1), and 72 of the Act. I Order the Landlord to retain the Tenant's security deposit of \$1317.50, plus interest, in partial satisfaction of this award. I Order the Tenant to pay the balance due of **\$9307.34.**

The Landlord must serve this Order to the Tenant as soon as possible. If the Tenant does not pay, this Order may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

<b>Monetary Issue</b>	<b>Granted Amount</b>
Unpaid rent	\$10,540.00
Landlord's filing fee	\$100.00
Tenant's security deposit, plus interest	- \$1332.66
<b>Total Amount</b>	<b>\$9307.34</b>

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: June 13, 2024

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Residential Tenancy Branch