



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (Act) for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) dated April 28, 2024, for \$7,250.00 in unpaid rent.

This hearing also dealt with the Landlord's Application for Dispute Resolution under the Act for:

- enforcement of the 10 Day Notice.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The parties acknowledged receipt of the Proceeding Packages from one another. Neither party raised concerns regarding service. I therefore found the parties duly served in accordance with the Act.

Service of Evidence

The Tenant acknowledged that they did not serve the Landlord with their documentary evidence and the Landlord was unable to provide me with any service information regarding service of their documentary evidence on the Tenant. Although they stated that service was done by their agent, that agent did not attend the hearing or submit evidence supporting service. The Tenant also denied receipt of any documentary evidence from or on behalf of the Landlord.

Based on the above, I was not satisfied that any of the documentary evidence submitted by the parties had been served as required. I therefore excluded the documentary evidence before me from both parties from consideration, except for the 10 Day Notice and tenancy agreement. The parties agreed on the details of this evidence and both parties had copies prior to the filing of the applications.

Preliminary Matters

Although the Tenant requested an opportunity to submit further documentary evidence after the hearing, their request was denied.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure (Rules) states that all evidence an applicant intends to rely on must be served on the other party as soon as possible, and received not later than 14 days before the hearing. Rule 3.15 of the Rules states that all evidence a respondent intends to rely on must be served on the other party as soon as possible, and received not later than 7 days before the hearing.

I appreciate that the Tenant has been under stress, and dealing with the significant decline of their vulnerable and unhoused family member's health. However, notices to end tenancy are serious matters. Applications seeking their cancellation or enforcement should therefore be taken seriously by the parties, who are required to prepare adequately for the hearing.

I am satisfied that the Tenant had time to gather and serve documentation on the Landlord regarding the payment of rent, or their reasons for withholding it under the Act, in the one and a half months since the 10 Day Notice was served. Further to this, if the Tenant believed that they had grounds to withhold the rent and seek cancellation of the 10 Day Notice, they should have had sufficient evidence of such at the time of filing their application on May 7, 2024. Finally, the grounds for lawfully withholding or deducting rent under the Act are exceptionally limited, and the Tenant acknowledged during the hearing that none of these grounds apply.

For the reasons set out above, I denied the Tenant's request.

Issues to be Decided

Is the Tenant entitled to cancellation of the 10 Day Notice?

If not, is the Landlord entitled to an Order of Possession and recovery of unpaid rent?

Background and Evidence

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

The Landlord stated that as the Tenant has not been paying rent as required, the 10 Day Notice was posted to the door of the rental unit on April 28, 2024. In their application the Tenant stated that they received the 10 Day Notice off their door on April 28, 2024. The 10 Day Notice is signed and dated April 28, 2024, has an effective date of May 12, 2024, and states that as of April 16, 2024, the Tenant owed \$7,500.00 in outstanding rent.

The parties agreed that rent in the amount of \$2,000.00 is due on the 15th day of each month under the tenancy agreement. While the Tenant acknowledged that some amount of rent is owed to the Landlord, they denied owing the amount set out on the 10 Day Notice as they believe the Landlord owes them compensation for a variety of things including but not limited to a lack of heat, vandalism to their vehicle in the parking lot, and repairs.

I advised the parties that rent is due in full and on time as set out under the tenancy agreement and that there are only 6 situations when a tenant may lawfully withhold or deduct rent:

- the tenant has an arbitrator's decision allowing the deduction;
- the landlord illegally increases the rent;
- the landlord has overcharged for a security or pet damage deposit;
- the landlord refuses the tenant's written request for reimbursement of emergency repairs;
- the tenant has the landlord's written permission allowing a rent reduction; and
- the tenant was served with a notice to end tenancy that permits them to withhold or deduct rent under the Act, such as a notice to end tenancy for landlord's use of property.

When asked, the Tenant acknowledged that none of the above reasons for lawfully withholding rent under the Act applied. Although the Tenant stated that they had completed emergency repairs under section 33 of the Act, they acknowledged that they have not yet invoiced the Landlord for these repairs as required.

While both parties came significantly unprepared to the hearing to answer questions about the Tenant's rent payment history, or lack thereof, they eventually agreed that the

following rent payments were made between November 9, 2024, and June 11, 2024, the date of the hearing:

- \$1,000.00 on November 9, 2023;
- \$1,000.00 on November 22, 2023;
- \$600.00 December 5, 2023;
- \$2,400.00 January 4, 2024; and
- \$750.00 April 18, 2024.

The parties agreed that no rent was paid in May or June.

Analysis

Is the Tenant entitled to cancellation of the 10 Day Notice?

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

The parties agreed at the hearing that rent in the amount of \$2,000.00 is due on the first day of each month. While I appreciate the difficulty of the Tenant's family and financial situation, these circumstances do not amount to a right under the Act to deduct or withhold rent.

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 Branch. If the tenant does 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) of the Act, and required to comply with it.

Based on the application and the lack of credible or reliable evidence or testimony to the contrary, I accept that the 10 Day Notice dated April 28, 2024, was posted to the door of the rental unit on April 28, 2024, and received by the Tenant that same day. As a result, I find that the Tenant had until May 3, 2024, to either pay the overdue rent or file an application with the Branch seeking cancellation of the 10 Day Notice.

Based on the testimony of the parties about the amount of rent due each month, and the rent payments made, I am satisfied on a balance of probabilities that:

- not less than \$7,250.00 was owed in outstanding rent at the time the 10 Day Notice was served; and

- this amount was not paid within 5 days after the Tenant received the 10 Day Notice.

As a result, and as the Tenant's application seeking its cancellation was not filed until May 7, 2024, I find that conclusive presumption under section 46(5) of the Act applies. I therefore dismiss the Tenant's application seeking its cancellation without leave to reapply, and find that the Tenant has been overholding the rental unit since May 12, 2024, the effective date of the 10 Day Notice.

While the Tenant stated that they should be permitted an extension under section 66 of the Act to the time limit set out under section 46(4) of the Act, they did not apply for such an extension in their application, despite this option being available to them. As set out under rule 6.2 of the Residential Tenancy Branch Rules of Procedure (Rules), the hearing is limited to matters claimed in the application unless the arbitrator allows a party to amend the application. No amendment was submitted by the Tenant in advance of the hearing seeking to add such a claim. I also did not find it reasonable or appropriate to amend the application at the hearing under rule 7.12, as I was not satisfied that the Landlord could reasonably have anticipated this request, and they did not consent to such an amendment.

Further to the above, no corroboratory evidence was submitted by the Tenant to suggest, let alone demonstrate to my satisfaction on a balance of probabilities, that they were prevented from filing the application on time due to exceptional circumstances. There was also no evidence before me to demonstrate that the Landlord agreed to an extension to the time limit set out under section 46(4) of the Act. While the Tenant stated at the hearing that they had completed emergency repairs, no evidence of this was submitted and the Tenant acknowledged that they had not yet invoiced the Landlord for any such repairs. As a result, I find that even if the Tenant had properly applied for an extension, which they did not, or the application was amended to include such a claim, which it was not, the Tenant would nevertheless have been unsuccessful in establishing a claim for an extension under sections 66(1) and 66(2) of the Act.

Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act.

As set out above, I have dismissed the Tenant's Application seeking cancellation of the 10 Day Notice. Having reviewed this 10 Day Notice, I am satisfied that it complies with

section 52 of the Act. As a result, I find that the Landlord is entitled to an Order of Possession.

The Landlord sought an end to the tenancy as soon as possible and the Tenant sought at least until the end of June 2024, if not until the end of July 2024, to vacate. Pursuant to Residential Tenancy Policy Guideline (Guideline) 54, I have considered the respective positions of the parties, the length of the tenancy, and the fact that a significant amount of rent is still outstanding.

Based on the above, I do not find it reasonable to give the Tenant a significant amount of time to vacate. As a result, I grant the Order of Possession to the Landlord for **1:00 P.M. on June 30, 2024**, pursuant to sections 55(1) and 68(2)(a) of the Act. However, it should be noted by the Tenant that this is still longer than the standard seven days set out in Guideline 54, even though they have not paid rent for June, and owe a significant amount of outstanding rent for previous months.

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 have already found that the 10 Day Notice complies with section 52 of the Act. I therefore find the Landlord is entitled to recover unpaid rent up to June 30, 2024, the effective date of the Order of Possession, in the amount of **\$10,250.00**. This amount includes:

- the \$7,250.00 in outstanding rent owed up to May 14, 2024, as set out in the 10 Day Notice;
- the \$2,000.00 in rent owed for May 15, 2024 – June 14, 2024; and
- the \$1,000.00 owed for the remaining ½ a month between June 15, 2024 – June 30, 2024.

Pursuant to section 67 of the Act, I therefore grant the Landlord a \$10,250.00 Monetary Order, and I order the Tenant to pay this amount to the Landlord.

Conclusion

The Tenant's application is dismissed without leave to reapply.

The Landlord's application seeking enforcement of the 10 Day Notice is granted.

Pursuant to sections 55(1) and 68(2)(a) of the Act, I grant an Order of Possession to the Landlord **effective at 1:00 P.M. on June 30, 2024, after service of this Order on the**

Tenant. The Landlord is provided with this order in the above terms and the Tenant must be served with this order by the Landlord as soon as possible using a service method approved under the Act. Should the Tenant or anyone on the premises fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I also grant the Landlord a Monetary Order in the amount of **\$10,250.00** under sections 26, 55(1.1), and 67 of the Act for unpaid rent up to and including June 30, 2024. The Landlord is provided with this order in the above terms and the Tenant must be served with this order by the Landlord as soon as possible using a service method approved under the Act. Should the Tenant fail to comply with this Order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 57(2) of the Act, a landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

Pursuant to section 57(3) of the Act, a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended, or for any loss suffered by a new tenant if their occupancy of the rental unit is prevented or delayed due to the overholding.

Section 38(3) of the Act states that a landlord may retain from a deposit, which includes the original deposit amount and any interest accrued in accordance with the regulations, an amount that the director has previously ordered the tenant to pay to the landlord, and at the end of the tenancy remains unpaid.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: June 19, 2024

Residential Tenancy Branch