

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution regarding the 3rd Floor rental unit 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

and the Tenant's Application for Dispute Resolution regarding the Ground Floor rental unit 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
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under sections 47 and 55 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenant(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Preliminary Matters

Both parties agree that the Tenant's mother was the original tenant, but that she has passed away. The Tenant and G.M. affirm that she passed away on July 23, 2021, while the Landlord affirms her estate has been paying the rent since sometime in 2021.

The Landlord claims that the tenancy agreements became invalid at the time of the original tenant's passing and further affirms that the Tenant is not the estate representative, but rather G.M. is.

The Tenant and G.M. both affirm that the Tenant has been the estate representative since the time of the original tenant's death.

Section 1 of the Act defines "tenant" as including the estate of a deceased tenant and I find the Tenant's and G.M.'s testimony to be reliable that the Tenant is the estate representative, and has been paying the rent, as such, the tenancy continues. Furthermore, as the Landlord, by his own admission, has been accepting rent from the Tenant since sometime in 2021, even if the Tenant is not, in fact, the estate representative, I find the Landlord, by accepting rent for approximately three years from the Tenant, created a new, implied, tenancy agreement with the Tenant under section 1 of the Act

Issues to be Decided

Should the landlord's 10 Day Notice for the 3rd Floor rental unit be cancelled?

Should the landlord's 10 Day Notice for the Ground Floor rental unit be cancelled?

Should the landlord's One Month Notice for the Ground Floor rental unit be cancelled?

Facts and Analysis

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

Should the landlord's 10 Day Notice for the 3rd Floor rental unit be cancelled?

Both parties agree that this tenancy was month to month and that monthly rent was \$1232.00, due before the first day of the month.

The Tenant provided a copy of the 10 Day Notice. It is signed May 6, 2024, with a move out date of May 16, 2024. It requests \$503.76 in unpaid rent due on April 30, 2024.

The Tenant affirms vacating the rental unit on April 21, 2024. Both parties agree that that Landlord received a text from the Tenant on April 23, 2024, stating the Tenant would be vacating. The Tenant confirms this was the first notice that she would be vacating.

Both parties further agree that the Tenant returned the keys to the Landlord on April 23, 2024.

The Landlord provided a Monetary Order Worksheet that requests \$1232.00 for May 2024 rent and an additional \$626.00 rent for June 1-15, 2024.

The Landlord provided a copy of letter from the Tenant, dated May 16, 2024, stating she gives formal notice to the Landlord and acknowledging that she vacated the rental unit and returned the keys on April 23, 2024. Both parties agree that the Tenant provided this at the Landlord's request.

The Landlord affirms that he believed the Tenant had sublet the rental unit after she returned the keys, because she had asked for consent to do so several times. When asked, the Landlord confirmed that permission to sublet was never given. The Tenant affirms not subletting the rental unit after she returned the keys.

As the Landlord obtained the keys to the rental unit on April 23, 2024, when the Tenant moved out, I find there are not reasonable grounds for the Landlord to believe the rental unit was being sublet after this date, and that the Landlord was aware that possession of the rental unit had been returned to him on April 23, 2024. I find the letter from the Tenant, dated May 16, 2024, was not necessary, and I find it was most likely requested by the Landlord in an effort to expand his claim for unpaid rent.

I find that the Tenant violated section 45 of the Act when informing the Landlord on the day she vacated, April 23, 2024, that she would be vacating. Section 45 requires the tenant's notice to end the tenancy to be effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

As the Tenant did not give proper notice to the Landlord, I find the Landlord is entitled to rent for May 2024. Landlord is not entitled to any rent for June 2024.

The 10 Day Notice requests \$503.76. The Landlord affirms this is because he received a lump sum payment, equivalent to the ground floor rent, from the Tenant and the Landlord decided, of his own accord, to split the payment between both rental units, thus putting both rental units into arrears.

I find this to be erroneous, as this e-transfer was for the amount of rent of the ground floor rental unit, it should have been applied solely to that account, particularly because it was received after the Landlord had regained sole possession of the 3rd floor rental unit.

I deem the Tenant paid no rent for the 3rd floor rental unit for May 2024, and the monies applied by the Landlord to it, was for the ground floor rental unit.

I find that the landlord has established a claim for \$1232.00 in unpaid rent for May 2024. Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent under section 55 and 72 of the Act.

The landlord does not need an order of possession because they already have possession.

Should the landlord's 10 Day Notice for the Ground Floor rental unit be cancelled?

Both parties agree that this tenancy was month to month and that monthly rent was \$1757.00.

The Tenant provided a copy of the 10 Day Notice. It is signed May 6, 2024, with a move out date of May 16, 2024. It requests \$723.24 in unpaid rent due on April 30, 2024.

The Tenant provided a copy of an e-transfer, and an e-transfer debit, showing a payment of \$1757.00 to the Landlord on May 1, 2024.

The Landlord confirms he received a lump sum payment, equivalent to the ground floor rent, from the Tenant and decided, of his own accord, to split the payment between both rental units, thus putting both rental units into arrears.

I find this to be erroneous, as this e-transfer was for the amount of rent of the ground floor rental unit, it should have been applied solely to that account, particularly because it was received after the Landlord had regained sole possession of the 3rd floor rental unit.

I deem the Tenant paid May 2024 rent for the ground floor rental unit, in full, and on time.

Therefore, the Tenant's application is granted 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.

The 10 Day Notice of May 6, 2024, for the ground floor rental unit is cancelled and of no force or effect.

Should the landlord's One Month Notice for the Ground Floor rental unit be cancelled?

Under section 63 of the Act, both parties agreed to the following terms of a final and binding resolution of the Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) of May 6, 2024, under section 47 of the Act:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on August 15, 2024, by which time the Tenant agreed to have vacated the rental unit.

Both parties agreed, of their own free volition and without any element of coercion, that these particulars comprise the full settlement of all aspects of the current Tenant's

application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act

In order to give effect to the settlement reached between the parties, and as discussed at the hearing, I grant an Order of Possession to the Landlord effective **at 1:00 p.m. on August 15, 2024, after service of this Order** on the Tenant

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$1232.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent for the Third Floor Unit under sections 55 and 72 of the Act	\$1232.00
Total Amount	\$1232.00

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.

I grant an Order of Possession to the Landlord **effective at 1:00 PM on August 15, 2024, after service of this Order on the Tenant(s)**. Should the Tenant(s) 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: June 12, 2024

Residential Tenancy Branch