

DECISION

Introduction

This hearing dealt with the Tenant's May 29, 2024, 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
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act

The hearing was attended by the Landlord and their Agent.

The Tenant did not attend and was not represented.

The Landlord and their Agent provided sworn testimony and referred to evidence.

Service of Notice and Evidence

The Landlord testified that they were not served proof of Notice or Evidence from the Tenant and that the Landlord only learned of this participatory hearing because they contacted the RTB. The Landlord had submitted a Direct Request application which they withdrew once they became aware of the Tenant's dispute.

The Landlord requested to proceed with the Tenant's application so that they could provide submissions.

The Landlord testified that they served the Tenant with copies of their evidence regarding this dispute, by email on June 11, 2024, and that proof of service by email was provided.

The Landlord referred to proof of a signed RTB 51, service by email consent form, dated November 29, 2023.

I find that the Landlord served the Tenant with copies of their evidence as required by the Act and Regulations, and RTB Rules of Procedure 3.15 and 3.16.

Issues to be Decided

- Is the Landlord entitled to 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?
- Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the Act?
- Is the Landlord authorized 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?

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.

The residential property is a single-family dwelling with two rental units.

Evidence was provided showing that this tenancy began December 1, 2023, as a fixed term 12-month tenancy that was to become month-to-month thereafter.

Monthly rent was \$3,250.00 due at the first of the month and paid by Etransfer when it was paid. The Landlord testified that rent was paid late for the months of January – April 2024.

The Landlord collected a \$1,625.00 security deposit and a \$1,625.00 pet damage deposit when the tenancy agreement started between the Landlord, the Tenant and a second named individual.

The Landlord referred to a written addendum signed February 7, 2024, that removed the second named tenant from the tenancy agreement and also refunded the \$1,650.00 pet damage deposit to the second tenant.

The Landlord confirmed that they are still holding the \$1,625.00 security deposit and that their tenancy agreement is with the Tenant only.

The Landlord testified that the Tenant did not pay rent for May or June 2024.

The Landlord referred to copies of emails with the Tenant submitted as evidence and testified that the Tenant wrote that they were out of town, out of the country, and that rent would be paid. But it was not paid. The Landlord testified that they spoke with the tenants of the lower unit who indicated they have not seen the Tenant in weeks.

The Landlord's Agent testified that some of this correspondence is redacted because it represented without prejudice discussion between the Landlord and Tenant.

The Landlord also emphasized that the Tenant allegedly installed a security system without permission within the rental unit and that the Tenant claimed they need to be present to remove the security system.

The Landlord testified that they emailed Notice of Access to the Tenant on June 12, 2024, that the Landlord would be accessing the rental unit on June 14, 2024, for maintenance. The Landlord testified that when they accessed the unit, it appeared vacant with only a couch and other minor items present.

The Landlord referred to proof of a 10-day Notice to End Tenancy, dated May 17, 2024, that was issued on an RTB-30 Notice. The stated move out date on this Notice is May 20, 2024, and it identifies \$3,250.00 in rent as owing as of May 1, 2024.

The Notice was served to the Tenant by email on May 17, 2024. The Landlord provided a completed RTB 34, proof of service, and provided a copy of the actual email sent to the Tenant with the Notice as an attachment, as evidence.

The Landlord's Agent testified that the Landlord is entitled to payment of rent for May and June 2024, because the Tenant disputed the May 17, 2024, Notice on May 29, 2024.

Analysis

The landlord is responsible under RTB Rule of Procedure 6.6 to establish on the balance of probabilities, the validity of the notice to end tenancy. There is a three-part test, in accordance with the Act, that examines the validity of a notice to end tenancy including:

1. Service of the notice - section 88 and 90 of the Act
2. Specific information recorded on the notice - section 52 of the Act
3. Reason for the notice - section 46 of the Act

I find that the Landlord served the Tenant with a copy of the 10-day Notice dated May 17, 2024, on May 20, 2024, as required by section 45 of the Regulations because the Landlord provided proof of serving the email on May 17, 2024, as permitted by the Regulations, to an email provided for service.

I therefore find that the Tenant failed to dispute the Notice within the 5-day deadline permitted by 46(5) of the Act and find that the Tenant failed to pay outstanding rent within the 5-day window permitted by 46(4) of the Act.

I therefore find that the Tenant is conclusively presumed to have accepted the end of this tenancy on May 30, 2024, the stated move out date on the May 17, 2024, Notice.

I find that the May 17, 2024, Notice complies with section 52 of the Act.

I find that the Landlord had grounds to issue the May 17, 2024, Notice because the Tenant did not pay rent in May 2024, and \$3,250.00 was owing on May 1, 2024.

Based on the above, I find that the May 17, 2024, Notice is valid.

Is the landlord entitled to an Order of Possession based on a Notice to End Tenancy?

I find that the Landlord is entitled to an Order of Possession under 55(1) and 55(2) of the Act for the 10-Day Notice dated May 17, 2024, because the Notice was valid.

I find that this Order of Possession will be effective 2-days after service on the Tenant because the Landlord's testified that the appear to be only minor items present in the rental unit and the Tenant is understood to be residing elsewhere.

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

As noted above, I find that the Notice to end tenancy dated May 17, 2024, is valid.

I find that the Tenant did not pay rent as required for May (\$3,250.00) or June (\$3,250.00) and that the Landlord is entitled to payment of \$6,500.00.

I make this award for rent in accordance with RTB Policy Guidelines 3 and 16, and award compensation for the full month of June 2024, because the Tenant proceeded to dispute the Notice with an application dated May 29, 2024, which suggests an intention to retain the tenancy agreement despite not paying rent.

I find that the Landlord is entitled to a monetary order for unpaid rent in the amount \$6,500.00. I make this order under section 55(1.1) of the Act.

$\$3,250.00 + \$3,250.00 = \$6,500.00$

Because evidence was also received that the Tenant paid a \$1,625.00 security deposit, the current value of this deposit must be offset against monies owed.

According to the online Residential Tenancy Interest Calculator, this deposit is valued at **\$1,648.91** at the day of the hearing having earned \$23.91 in interest.

I therefore order that the Landlord is entitled to retain the full value of this deposit under section 72 of the Act to partially satisfy monies owed.

Conclusion

I grant an Order of Possession to the Landlord **effective two (2) days** after service on the Tenant. 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.

I grant the Landlord a Monetary Order in the amount of **\$4,851.09** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$6,500.00
Authorization to Retain Security Deposit with current value	\$1,648.91
Total Amount	\$4,851.09

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.

The Tenant's application is dismissed without 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 *Residential Tenancy Act*.

Dated: June 25, 2024

Residential Tenancy Branch