

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's 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

and with the Landlord's Application for Dispute Resolution under the Act 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 recover the filing fee for this application from the Tenant under section 72 of the Act

Agent A.K. and Agent A.F. attended the hearing for the Landlord. The Tenant did not attend the hearing.

### **Service of the Tenant's Notice of Dispute Resolution Proceeding (Proceeding Package)**

The Tenant provided a copy of a Proof of Service document to the Residential Tenancy Branch before the hearing, which states that they served the Proceeding Package to the Landlord's agent A.K. in person on June 12, 2024. This document is signed by the Landlord's agent A.K. who was present at the hearing and confirmed receipt of the Tenant's application. I find that the Tenant's Proceeding Package has been served in accordance with section 89 of the Act.

### **Service of the Landlord's Notice of Dispute Resolution Proceeding (Proceeding Package)**

The Landlord provided a copy of a Proof of Service document to the Residential Tenancy Branch before the hearing, which states that they served the Proceeding Package to the Tenant by Registered Mail on June 20, 2024. Section 90 of the Act says that a document served by mail is deemed received on the fifth day after it is mailed. I find that the Landlord's Proceeding Package has been served in accordance with section 89 of the Act and is deemed to have been received June 25, 2024, in accordance with section 90 of the Act.

## **Service of Evidence**

No evidence was received by the Residential Tenancy Branch from the Tenant. The Landlord confirmed that they did not receive any evidence for consideration.

The Landlord asserts that evidence in response to the Tenant's application as well as evidence in support of their own application was provided in the same package as the Landlord's Proceeding Package by Registered Mail on June 20, 2024. I accept this undisputed testimony and find that the evidence was served in accordance with Section 88 of the Act.

## **Preliminary Matters**

### **Consequences of not attending the hearing**

The Tenant did not attend the hearing. Rule 7.3 of the Rules of Procedure permits that an arbitrator may conduct a dispute resolution hearing in the absence of a party if a party of their agent fails to attend the hearing. I conducted this hearing in the absence of the Tenant.

Where a party does not attend the hearing to present evidence, Rule 7.4 permits an arbitrator to consider evidence submitted. I have considered the Tenant's written application in their absence.

## **Issues to be Decided**

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession and Monetary Order?

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

## **Background and Evidence**

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

This tenancy began on November 1, 2022, with a monthly rent of \$1,224.00, due on the 1st of the month, and a security deposit in the amount of \$600.00. This information is found on the tenancy agreement provided by the Landlord in their evidence and was confirmed verbally by the Landlord's agent A.K. at the hearing.

The Landlord submits that the Tenant did not pay rent for the month of June when it was due. The Landlord provided a copy of the accounting ledger showing the outstanding rent. The Landlord's agent A.K. issued the 10 Day Notice on June 3, 2024, and placed a copy of it in the Tenant's mailbox same day. The Tenant's written application confirms receipt by this method on June 5, 2024.

The Landlord's agent A.K. submits that since issuing the 10 Day Notice, no money has been paid for June or July.

In their written application, the tenant asserts that he has not paid rent because his sleep has been disrupted by noise from the unit above him.

## **Analysis**

### **Should the Landlord's 10 Day Notice be cancelled?**

Section 46 of the Act states that a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than 10 days after the Tenant receives the notice.

I find that the 10 Day Notice dated June 3, 2024, was properly served in accordance with section 88 of the Act, by attaching a copy to the Tenant's door. I deem the document to have been received by the Tenant on June 5, 2024, the day indicated on their application.

I find that the Landlord has established that monthly rent in the amount of \$1,224.00 was unpaid for the month of June and for July.

The Tenant in their written application disputes this notice not because he considers it invalid but because he is unhappy with the conditions of the tenancy.

Section 26(1) of the Act states that a tenant must pay rent when it is due whether or not the landlord complies with the Act unless the tenant has a right under the Act to deduct all or a portion of the rent. Those rights include instances where the tenant has:

- overpaid a security or pet deposit,
- paid for emergency repairs,
- overpaid rent because of an illegal rent increase, applied compensation owed from a notice to end tenancy, or
- has an order from the Residential Tenancy Branch allowing them to withhold rent.

The tenant had no right under the Act to withhold rent and erred in doing so.

For the above reasons, the Tenant's application 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 is dismissed, without leave to reapply.

### **Is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?**

Section 55(1) of the Act says 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.

Section 52 of the Act says that in order to be effective, a notice to end tenancy must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, and be in the approved form (#RTB-30). I have reviewed the 10 Day Notice issued June 3, 2024, and find that it complies with the requirements of section 52 of the Act.

As I have dismissed the Tenant's application and found that the notice complies with section 52 of the Act, I find that the Landlord is entitled to an Order of Possession.

Residential Tenancy Policy Guideline 54 states that effective dates for orders of possession in these circumstances are generally set for seven days after the order is received. I defer to that guidance and grant an order of possession effective seven days after the order is received by the Tenant.

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

Section 55(1.1) of the Act says 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.

As noted above, I find that the Notice complies with section 52 of the Act.

The 10 Day Notice states that the Tenant failed to pay rent in the amount of \$1224.00 as of June 1, 2024. The Tenant continues to reside in the rental unit and has further failed to pay rent for the month of July.

I find the Landlord is entitled to a Monetary Order for unpaid rent for the months of June and July in the amount of \$2,448.00.

### **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**

The Tenant's application to cancel the 10 Day Notice is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord **effective 7 days after service of this Order on the Tenant, at 1:00 PM**. 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.

I grant the Landlord a Monetary Order in the amount of **\$2548.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$2448.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$2548.00</b>

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 and enforced in the Small Claims 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: July 19, 2024

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Residential Tenancy Branch