

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
- an order to allow access to or from the rental unit for the Tenant or the Tenant's guests under sections 30 and 62 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 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
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The hearing also dealt 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

Landlord MT attended the hearing.

No one attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenants were served on June 19th, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided the tracking number to confirm this service.

The Landlord denied receiving service of the Tenants application. However, as the principal issue of the Tenants' application was to dispute the Landlord's Notice to End Tenancy, and since dismissing with leave to reapply would benefit the Tenants for

failing to serve the Landlord and attend the hearing, I have elected to deal with both applications together.

Preliminary Matters

At the outset of the hearing, MT provided the correct order of his legal name. The Tenant's application has been correspondingly amended.

This hearing began via Conference Call at 9:30 AM, with the Landlord MT attending. The respondent Tenant did not attend although the conference call was left open for the duration of the hearing, approximately 35 minutes.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

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

Is the Tenant entitled to an order to allow access to or from the rental unit for the Tenant or the Tenant's guests under sections 30 and 62 of the Act?

Is the Tenant entitled to an order for the Landlord to provide services or facilities required by law under section 27 of the Act?

Is the Tenant entitled to an order setting conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

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

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 parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on January 15th, 2024, with a monthly rent of \$2,300.00, due on the first day of each month, and with a security deposit in the amount of \$1,150.00.

MT testified that TP was short in her rent for April 2024 by \$300, and provided records of two e-transfers of \$1000 each to substantiate the shortfall.

MT testified that TP has since not paid any amount of rent for May, June or July.

On June 1st, MT issued TP a 10 Day Notice to End Tenancy for Unpaid Rent. The Notice cited the amount of \$2,600.00 due on May 1st, 2024. MT testified that he served the Notice to TP in person. MT initially testified that he did not recall the exact day that he served the notice to TP, but later testified that he served it the same day the notice was signed. In the Tenant's application, she indicates that the notice was received on June 6th, 2024.

MT testified that a rental agreement with only TP was prepared, but not signed, after TP and her partner broke up.

Analysis

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

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 Residential Tenancy Branch. If the tenant(s) do 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).

As the Landlord's evidence with respect to the date that he served the Notice to the Tenant was vague and contradictory, I find that the 10 Day Notice was served to the Tenant on June 6th, 2024, the date given by the Tenant. The Tenant therefore had until June 11th to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenant disputed the Notice on June 12th, outside of the statutory time permitted. As the Tenant did not apply for an extension of time or provide evidence of extraordinary circumstances such that the time to dispute the notice should be extended, I find that the Tenant is deemed to have accepted the end of the tenancy on the effective date of the Notice.

I have reviewed the Notice and I find the effective date is incorrect. Pursuant to section 46 of the Act, a landlord may end a tenancy "on a date that is not earlier than 10 days after the date the tenant receives the notice." As the effective date is given as June 10th, and I find that the Tenant received the Notice on June 6th, pursuant to section 53(3) of the Act and the provisions of the *Interpretation Act*, the effective date is automatically corrected to June 17th, 2024. I find the remainder of the Notice conforms to the requirements of section 52 of the Act.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has shown sufficient grounds to validate the 10 Day Notice and obtain an end to this tenancy.

I accept the Landlord's uncontradicted testimony that the Tenant did not pay rent for May 2024, and was short \$300 in rent for April 2024 and has not paid any amount since.

Therefore, the Tenant's application is for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent under sections 46 and 55 of the Act is dismissed.

For the above reasons, the Landlord's application for an Order of Possession based on a 10 Day Notice under sections 46 and 55 of the Act is granted.

Is the Tenant entitled to an order to allow access to or from the rental unit for the Tenant or the Tenant's guests under sections 30 and 62 of the Act?

Is the Tenant entitled to an order for the Landlord to provide services or facilities required by law under section 27 of the Act?

Is the Tenant entitled to an order setting conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

As these claims relate to an ongoing tenancy, and I have determined that the Tenant was conclusively presumed to have accepted the end of the Tenancy on June 17th, 2024, these claims are moot.

As a result, the claims are each dismissed, without leave to reapply.

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.

Based on the evidence before me, I find that the Landlord has established a claim for unpaid rent owing for April of 2024 in the amount of \$300, and for May and June in the amount of \$2,300 for each month.

I accept the Landlord's uncontradicted testimony that no rent was paid for May and June of 2024, and that the Tenants paid only \$2000 in rent for April.

As the tenancy is deemed to have ended on June 17th, no rent was due on July 1st. A claim for damages is not before me.

Section 55 of the Act states that if a Tenant applies to dispute a 10 Day Notice, and the Notice is upheld, the Landlord must be granted a Monetary Order for the unpaid rent.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$4,900.00.

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

As the Landlord was successful in his 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 from the Tenant.

Conclusion

I grant an Order of Possession to the Landlord effective on **July 31st, 2024**, after service of this Order on the Tenants. Should the Tenants 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.

The Tenants' application for cancellation of the Landlord's Ten Day Notice under section 49 of the Act is dismissed, without leave to reapply.

I grant the Landlord a Monetary Order in the amount of **\$5,000.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$4,900.00
authorization for the Landlord to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$5,000.00

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.

The Tenants' application for an order to allow access to or from the rental unit for the Tenant or the Tenant's guests is dismissed, without leave to reapply.

The Tenants' application for an order for the Landlord to provide services or facilities required by law is dismissed, without leave to reapply.

The Tenants' application for a Monetary Order for damage or loss under the Act, regulation or tenancy agreement is dismissed, without leave to reapply.

The Tenants' application for an order setting conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act is dismissed, without leave to reapply.

The Tenants' application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act 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 Act.

Dated: July 15, 2024

Residential Tenancy Branch