

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's June 18, 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 requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

This hearing also dealt with the Tenant's July 10, 2024, cross 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
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 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
- an order to end the tenancy based on a frustrated tenancy agreement under section 44 of the Act

The Tenant E.C. attended the hearing for the Tenant.

The Landlord's Daughter and Agent attended the hearing for the Landlord.

### **Service of the Notice of Dispute Resolution Proceeding and Evidence**

Both parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Both parties affirmed that there were no issues with service of the June 18, 2024, application and the July 10, 2024, cross application and the evidence. I find that both parties were duly served with the materials in accordance with section 88 and section 89 of the Act.

## **Preliminary Matters**

Under Rule 2.3 and Rule 6.2 of the Rules of the Procedure, I exercise my discretion to only address the most urgent claims and sever the unrelated claims. Specifically, I will only address the issue of the cancellation of the Landlord's 10 Day Notices. The following claims are dismissed with leave to reapply.

- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 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
- an order to end the tenancy based on a frustrated tenancy agreement under section 44 of the Act

## **Issues to be Decided**

Should the Landlord's 10 Day Notice dated July 2, 2024, be cancelled? If not, is the Landlord entitled to an Order of Possession?

Should the Landlord's 10 Day Notice dated June 11, 2024, be cancelled? If not, is the Landlord entitled to an Order of Possession?

Should the Landlord's 10 Day Notice dated June 2, 2024, be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to retain all or a portion the Tenant's security deposit in partial satisfaction of the monetary award?

## **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 written tenancy was provided showing that this fixed term tenancy began on March 23, 2024, with a monthly rent of \$1,725.00, due on the first day of the month. The end

date of the fixed term is scheduled for March 22, 2025, after which the tenancy will continue month to month. The Landlord collected a security deposit in the amount of \$862.50, and the Landlord continues to hold the security deposit in trust. The tenancy is ongoing. The rental unit is an independent basement suite with its own kitchen, washroom, and entrance.

The Landlord's Daughter and Agent M.Z. testified that the Tenant did not pay rent for the month of July in 2024. M.Z. stated that on July 2, 2024, M.Z. and the Landlord J.Z. served the 10 Day Notice dated July 2, 2024 (July 10 Day Notice), by posting it to the door of the rental unit. M.Z. submitted a completed copy of the RTB-34 proof of service form. M.Z. testified that they also sent a copy of the July 10 Day Notice to the Tenant by registered mail. M.Z. submitted copies of pictures of the envelope, the July 10 Day Notice, and a Canada Post Registered Mail Receipt.

The Landlord's Agent M.Z. testified that at the time of this hearing, they still have not received any amount for July of 2024's rent. M.Z. submitted a spreadsheet to show the current amount of outstanding rent.

The Tenant testified that they are currently facing health challenges and financial challenges. The Tenant claimed that intermittent mail service at the rental unit has contributed to the financial challenges. The Tenant stated that they believe the Landlord may be tampering with the Tenant's mail. The Tenant referred to fifth page of a 5-page statement titled "Records\_of\_calls\_and\_bank\_info.pdf". In this statement, the Tenant sends a text message to the Landlord on May 16, 2024 to ask whether the Landlord saw any mail from Service Canada in the mailbox, to which the Landlord replied that they haven't checked the mailbox, and that the Landlord does not believe they have the Tenant's letter.

The Tenant affirmed that their bank account has been frozen. The Tenant declared that they do not believe they are withholding rent. The Tenant testified that they have not paid July of 2024's rent.

The Tenant submitted a copy of the July 10 Day Notice. The effective date of the July 10 Day Notice is July 17, 2024. The amount of unpaid rent cited on the July 10 Day Notice is \$1,725.00.

## **Analysis**

Rule 6.6 states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that is it more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances that is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must

prove they reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

**Should the Landlord's 10 Day Notice dated July 2, 2024, be cancelled? If not, is the Landlord entitled to an Order of Possession and a Monetary Order?**

Section 26(1) 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 this Act to deduct all or a portion of the rent.

Section 46 of the Act provides that a Landlord may serve a 10 Day Notice to End a Tenancy for Unpaid rent if rent is unpaid on any day after the day it is due.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, the director must grant the landlord an order of possession of the rental unit if:

- a) the landlord's notice complies with section 52 of the Act for form and content, and
- b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 55(1.1) of the Act states that if an order of possession is granted based on section 55(1), the director must also grant an order requiring the payment of the unpaid rent.

The onus is on the Landlord to demonstrate they had sufficient cause to issue the July 10 Day Notice.

Based on the testimony of the parties, the evidence provided, and on a balance of probabilities, I find that the Tenant has an obligation under the written tenancy agreement to fully pay rent on the first day of each month. I find that the Tenant breached section 26 of the Act and their obligation to pay rent under the tenancy agreement, by failing to pay rent in the amount of \$1,725.00 in July of 2024.

In general, a landlord is not responsible for a tenant's health challenges, or their financial challenges. I find that the financial challenges and health challenges claimed by the Tenant are not reasons under the Act for the Tenant to withhold July of 2024's rent.

Regarding the Tenant's allegation that the Landlord is tampering with the Tenant's mail, I have examined the Tenant's evidence and I do not assign much weight to the Tenant's allegation that the Landlord is tampering with their mail. I find that the Tenant has not presented on any evidence to support this allegation.

I have examined the July 10 Day Notice and I find that it complies with section 52 of the Act for form and content, I note that the 10 Day Notice is signed, provides the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy, and is in the approved form with all three 3 pages of the RTB-30 form present.

I dismiss the Tenant's request to cancel the July 10 Day Notice, and simultaneously uphold the Landlord's July 10 Day Notice.

Pursuant to section 55, I find that the Landlord is entitled to an Order of Possession, and a Monetary Order for unpaid rent for July of 2024.

Based on the relatively short length of the tenancy, I find that an Order of Possession effective seven days after service is appropriate here.

Pursuant to section 55(1) and section 67 of the Act, I find that the Landlord is entitled to a Monetary Order for July of 2024's unpaid rent in the amount of \$1,725.00.

**Should the Landlord's 10 Day Notice dated June 11, 2024, be cancelled? If not, is the Landlord entitled to an Order of Possession and a Monetary Order?**

Given the above findings that the tenancy will be ending, and the parties evidence submissions that indicate that June of 2024's rent was paid in full, I find that this issue is no longer relevant, and I decline to adjudicate it.

I dismiss the Tenant's request to cancel the 10 Day Notice dated June 11, 2024, without leave to reapply.

**Should the Landlord's 10 Day Notice dated June 2, 2024, be cancelled? If not, is the Landlord entitled to an Order of Possession and a Monetary Order?**

The onus is on the Landlord to demonstrate they had sufficient cause to issue the June 2, 2024, 10 Day Notice.

Regarding the 10 Day Notice dated June 2, 2024, I find that neither party made submissions at the hearing concerning this Notice. As a result, I am unable to verify the validity of the 10 Day Notice dated June 2, 2024.

Accordingly, I cancel the 10 Day notice dated June 2, 2024. The Tenant's request to cancel the 10 Day June dated June 2, 2024, is granted.

**Is the landlord entitled to retain all of the tenant's security deposit in partial satisfaction of the monetary award requested?**

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security deposit of \$862.50 plus interest in the amount of \$8.02, in partial satisfaction of the monetary award. The security deposit combined to the interest accumulated equals \$870.52.

The interest was calculated in accordance with the Residential Tenancy Regulations and with the assistance of the Residential Tenancy Branch Deposit Interest Calculator.

## Conclusion

I grant an Order of Possession to the Landlord **effective seven (7) days 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.

I grant the Landlord a Monetary Order in the amount of **\$854.48** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for July of 2024's unpaid rent under section 67 and of the Act	\$1,725.00
authorization to retain all of the tenant's security deposit in partial satisfaction of the Monetary Order granted under section 72 of the Act	Less \$870.52
<b>Total Amount</b>	<b>\$854.48</b>

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 and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in 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: July 26, 2024

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Residential Tenancy Branch