

## **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

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- request for an Order of Possession for unpaid rent for which a 10 Day Notice to End Tenancy for Unpaid Rent under section 46 and 55 of the Act was served
- request for Authorization to recover the filing fee for this application from the Tenant

### **Preliminary Matters**

The Tenant requested a further adjournment to seek legal counsel and to allow for oral submissions to be made as there was no time to do so in during the allotted time on August 26, 2024. This request was denied, in making this decision I considered Rule of Procedure 7.8, which provides the arbitrator will determine whether the circumstances warrant the adjournment of the hearing. Rule of Procedure 7.9 provides criteria for granting an adjournment, and states in part that **without restricting the authority of the arbitrator to consider other factors**, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

In making my decision to disallow the Tenant's request for an adjournment I considered the following:

- This is a cross application regarding a Notice to End Tenancy for Unpaid Rent, therefore both parties should have been aware of their responsibilities in providing evidence prior to the scheduled hearing and be prepared to participate in the hearing of August 12, 2024. The Tenant did not provide any evidence of payment, nor any evidence showing that the Notice was invalid.
- The Tenant did not provide any proof that the Landlord was served Notice of Dispute Resolution Proceeding Package (the "Proceeding Package") regarding their application. The Tenant was provided the opportunity to provide this information at the time of the reconvened hearing, however, was unable to do so beyond stating that she believed they were served via email.
- The Tenant was provided with an Adjournment at their request on August 12, 2024, with the belief that this would result in a resolution to the matter. However, subsequent settlement discussions on August 26, 2024, were unsuccessful largely due to the Tenant changing the settlement conditions numerous times during the discussions; while it would be inappropriate to consider the specifics of the terms discussed, it is relevant and appropriate to consider the nature of the discussions and the fact that numerous times during the discussions the Tenant made proposals and then changed the terms prior to a final agreement being made.

In consideration of the above, I find that the Tenant's request for further adjournment stems from what could be reasonably determined to be intentional or neglectful actions of the Tenant. Additionally, I find that the Tenant's request to further delay a decision is prejudiced and unfair to the Landlord given the nature of the dispute and the above facts. As such, the Tenant's request for a further Adjournment is disallowed.

## **Background and Evidence**

This matter was initially heard on August 12, 2024, during which both parties attempted to settle, however were unable to finalize an agreement. An adjournment was granted and both parties were encouraged to continue settlement discussions. On August 26, 2024, the matter reconvened. Despite being provided a further hour the parties were unable to come to an agreement.

This dispute is a cross application, with both parties aware that the reason for the dispute was to determine if a 10 Day Notice to End Tenancy (the "Notice") served by attaching to the Tenant's door on May 28, 2024, was a valid notice for which the Landlord is entitled to an Order of Possession.

The Tenant submits that they do not live at the rental unit, rather that they rent it for business purposes and accommodation and that there is not always someone there.

On July 5, 2024, the Tenant applied to dispute the Notice, indicating that it was received on July 5, 2024.

The Landlord applied for an Order of Possession on June 9, 2024, in relation to the May 28, 2024, Notice.

The Landlord submitted a copy of the Tenancy Agreement which provides a tenancy start date of June 1, 2022, with monthly rent of \$2165.00 per month. The Tenancy Agreement states it is a residential tenancy agreement and does not provide any indication that the rental is for business purposes. The Tenants listed on the agreement are the parties listed on both the Notice, and as a party in the Landlord's application for dispute. An additional agreement for month-to-month parking was submitted showing that parking was \$95.00 per month, this agreement or amount was not noted in the Residential Tenancy Agreement.

The Landlord submitted a ledger showing payments and charges since the onset of the tenancy. In reviewing the ledger, I note that the Landlord initially documented charges for parking and rent charges separately, however October 1, 2022, was the last noted charge for parking. The ledger indicates that the last rent payment was made on December 1, 2023, in the amount of \$2208.30 and indicates an increase in rent to \$2285.59 starting June 1, 2024. As per the ledger the tenant owes \$15,612.68 for failure to pay rent for 7 months, starting January 2024.

The Landlord provided proof that the Proceeding Package was sent via Registered Mail on July 11, 2024, to the rental unit address. It is noted that this was not picked up.

## **Analysis**

### *Tenant's Application*

Rule of Procedure 3.1 states, in part that the Notice of Dispute Resolution Proceeding Package (the "Proceeding Package") **must**, within three days of being made available serve the respondent. Rule of Procedure 3.1.1, provides that the applicant must submit to the branch that the applicant was served. Additionally, Rule 3.5 states that during a hearing an applicant must be prepared to demonstrate to the satisfaction of the director that each respondent was served with the Proceeding Package and all evidence as required by the Act and these Rules of Procedure. If the applicant cannot demonstrate that each respondent was served as required by the Act and the Rules of Procedure, the director may adjourn the application or dismiss it with or without leave to reapply.

The Tenant did not provide any evidence to prove that the Landlord was served with the Proceeding Package or evidence in accordance with the Act or Rules of Procedure. The Tenant was provided the opportunity to provide this information at the time of the reconvened hearing, however, was unable to do so beyond stating that she believed they were served via email.

The Tenant failed to prove that the Landlord was served in accordance with the Act, therefore their application is dismissed, without leave to reapply.

### *Landlord's Application*

The Landlord provided proof that the Proceeding Package was sent via Registered Mail on July 11, 2024, to the rental unit address; the package was not picked up.

Section 90 of the RTA, section 83 of the MHPTA, section 44 of the RTR, and section 60 of the MHPTR sets out when records that are not personally served are considered to have been received. Unless there is evidence to the contrary, a record is considered or

'deemed' received if given or served by mail (ordinary or Registered Mail/Express Post with signature option), on the fifth day after mailing it. Deemed receipt applies to all types of records not personally served.

Policy Guideline 12, states that where a record is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Tenant submits that they do not reside at the rental unit, however provided no evidence proving such; therefore, they did not prove that the failure to pick up the Proceeding Package was due to any factor other than the Tenant's refusal or deliberate failure to pick it up.

In consideration of the above, I find that the Landlord fulfilled the service requirements set forth in the Act.

I have reviewed all documentary evidence and I find that the Tenant was obligated to pay the monthly rent in the amount of \$2208.30 with an increase to \$2285.59 per month starting June 1, 2024.

In accordance with sections 88 and 90 of the Act, I find that the 10 Day Notice was served on May 28, 2024, and is deemed to have been received by the Tenant on May 31, 2024, three days after it was attached to the Tenant's door.

I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the five days granted under section 46(4) of the Act and did not provide a legal reason why they should be entitled to withhold rent.

Section 55 of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a)the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and (b)the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 55 (2) provides that a landlord may request an order of possession of a rental unit if (b)a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Section 55 (4) provides that the director may, without any further dispute resolution process under Part 5 [Resolving Disputes], (a)grant an order of possession, and (b)if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In consideration of the above findings, as well as upon reviewing the Notice, I find that the Landlord is entitled to an Order of Possession in accordance with section 55 of the Act.

In consideration of the above findings, I find that the Landlord is entitled to a Monetary Order in the amount of \$15,612.68, the amount owed at the time the Landlord applied for dispute resolution.

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

As the Landlord was successful in this application, their application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is granted.

**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 **\$15,712.68** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$15,612.68
Authorization for the Landlord to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$15,712.68</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.

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.

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: September 9, 2024

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Residential Tenancy Branch