

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 One Month Notice to End Tenancy for Cause (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act

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

- an Order of Possession for unpaid rent under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under sections 26 and 46 of the Act
- recovery of the filing fee under section 72 of the Act

The Landlords J.H. and P.P. attended the hearing for the Landlord

The Tenant attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Tenant testified that she served the Landlord with the Proceeding Package via registered mail but could not recall on what date. The Tenant entered into evidence a registered mail receipt dated July 19, 2024. Landlord J.H. testified that she received the Proceeding Package via registered mail on July 25, 2024 but it was missing the Notice of Dispute Resolution Proceeding document which the Tenant provided it 5-6 days later.

I find that the Landlord was sufficiently served for the purposes of this Act in accordance with section 71 of the Act, with the Proceeding Package, including the Notice of Dispute Resolution Proceeding document as the Landlord confirmed receipt of same on or around July 31, 2024.

The Tenant testified that she did not serve the Landlord(s) with her evidence. I find that the Tenant's evidence is excluded from consideration for failure to serve the Landlord.

The Landlords testified that the Tenant was served with the Proceeding Package and Landlord's evidence via registered mail on August 22, 2024. The Tenant confirmed

receipt of same. I find that the Tenants were served with the Proceeding Package and Landlord's evidence in accordance with section 89(1) of the Act.

Preliminary Matter

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is made at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Landlords' original application claimed unpaid rent in the amount of \$2,600.00 for August 2024. Since filing for dispute resolution, Landlord J.H. testified that the amount of rent owed by the Tenant has increased to include rent for September 2024.

I find the fact that the Landlords are seeking compensation for all outstanding rent, not just the amount outstanding on the date the Landlords filed the application, should have been reasonably anticipated by the Tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the Landlords' application to include a monetary claim for all outstanding rent in the amount of \$5,200.00.

Issues to be Decided

Are the Landlords entitled to a Monetary Order for unpaid rent?

Are the Landlords entitled to an Order of Possession for unpaid rent?

Are the Landlords entitled to recover the filing fee from the Tenant?

Is the Tenant entitled to cancel the One Month Notice?

Are the Landlords entitled to an Order of Possession for cause?

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.

Landlord J.H. testified that she served the Tenant with the One Month Notice in person on June 24, 2024. A witnessed proof of service document stating same was entered evidence. The Tenant testified that she cannot confirm nor deny Landlord J.H.'s above testimony. The Tenant's application for dispute resolution states that she received the One Month Notice on June 24, 2024. The Tenant filed to dispute the One Month Notice on July 12, 2024. The Tenant testified that she applied for additional time to dispute the

One Month Notice because she didn't realize the notice to end tenancy she was served was a One Month Notice to End Tenancy. The Tenant testified that she thought it was a 10 Day Notice to End Tenancy for Unpaid Rent but since she had already paid rent she thought no further action was needed.

The One Month Notice was entered into evidence, is signed by Landlord J.H., is dated June 24, 2024, gives the address of the rental unit, states that the effective date of the notice is August 1, 2024, is in the approved form, #RTB-33, and states the following grounds for ending the tenancy:

- Tenant is repeatedly late paying rent.

The Landlord testified that the Tenant has been late paying her rent every month since January 2024. The Tenant testified that she doesn't disagree and that sometimes its difficult for her to remember to pay her rent on time.

Landlord J.H. testified that the Tenant was served with the 10 Day Notice on August 3, 2024 by leaving it in the Tenant's mailbox. The Landlord entered into evidence a witnessed proof of service document stating same. The Tenant testified that she doesn't know if she was served with the 10 Day Notice because she hasn't checked her mailbox.

The 10 Day Notice was entered into evidence, is signed by Landlord J.H., is dated August 3, 2024, gives the address of the rental unit, states that the effective date of the notice is August 16, 2024, is in the approved form, #RTB-30, and states the following grounds for ending the tenancy:

Tenant failed to pay rent in the amount of \$2,600.00 due on August 1, 2024.

Both parties agree that the Tenant has not paid any rent for August or September 2024. The Tenant did not file an application for dispute resolution seeking to cancel the 10 Day Notice.

Analysis

Based on Landlord J.H.'s testimony, the witnessed proof of service document entered into evidence and the Tenant's application for dispute resolution, I find that the Tenant was personally served with the One Month Notice on June 24, 2024. Section 47(4) of the Act states that a Tenant has 10 days to dispute a One Month Notice after receiving it. The Tenant failed to dispute the One Month Notice on July 12, 2024, 18 days after receiving it.

Section 66 of the *Act* states that an arbitrator may extend a time limit established by this Act only in exceptional circumstances. Policy Guideline 36 states that the word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is

very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

I find that failing to read the One Month Notice when it was served is not an exceptional circumstance. I find that a reasonable person would have read the documents served upon them within a couple days of receipt. I dismiss the Tenant's application to extend the time limit to dispute the One Month Notice.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice to End Tenancy for Cause does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

The Tenant did not dispute the Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice, that being August 1, 2024. I therefore dismiss the Tenant's application for dispute resolution without leave to reapply. I also find, based on the testimony of both parties, that the Tenant has been late paying rent every day this year contrary to section 47(1)(b) of the *Act*. The One Month Notice is therefore upheld.

Section 55(1) of the *Act* states 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*. I find that the One Month Notice complies with section 52 of the *Act*. Therefore, I find that the Landlord is entitled to an Order of Possession.

Based on the testimony of Landlord J.H. and the witnessed proof of service document entered into evidence, I find that the 10 Day Notice was served to the Tenant's mailbox on August 3, 2024. Failing to check one's mailbox does not override the deeming provisions in section 90 of the *Act*. I find that the Tenant was deemed served with the 10 Day Notice on August 6, 2024, three days after it was left in the mailbox, in accordance with section 88 and 90 of the *Act*. The Tenant did not file to dispute the 10 Day Notice.

Based on the testimony of both parties I find that the Tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The Tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the Tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the 10 Day Notice. The 10 Day Notice is therefore upheld.

In this case, this required the Tenant to vacate the premises by August 16, 2024, as that has not occurred, I find that the landlords are entitled to a 2-day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the

Tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia. I find that it would be inappropriate to extend the effective date of the Order of Possession given that the Tenant has not paid any rent for August or September 2024.

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 this *Act*. Pursuant to section 26(1) of the *Act*, I find that the Tenant was obligated to pay the monthly rent in the amount of \$2,600.00 on the first day of each month. Based on the testimony of both parties, I find that the Tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$5,200.00 in unpaid rent for August and September 2024 under section 67 of the *Act*.

As the Landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the Tenant, pursuant to section 72 of the *Act*.

Conclusion

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

The Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the *Act* is dismissed, without leave to reapply.

I grant the Landlords a Monetary Order in the amount of **\$5,300.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under sections 26 and 67 of the Act	\$5,200.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$5,300.00

The Landlords are 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 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: September 10, 2024

Residential Tenancy Branch