

DECISION

Introduction

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

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 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

This hearing also dealt with a cross-application filed by the Tenant (the Tenant's Application) under the Act on July 26, 2024 seeking:

- cancellation of the Landlord's 10 Day Notice and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 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

The landlord's agent S.M. (the Landlord) attended the hearing for the Landlord.

Tenant K.M. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) for the Landlord's application

Based on the submissions before me, I find that the Landlord's Proceeding Package was sufficiently served on the Tenant in accordance with section 71(2) of the Act.

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Service of Evidence

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Preliminary Matters

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states that claims must be related to each other, and that if, in the course of the dispute resolution proceeding the arbitrator determines that it is appropriate to do so, the arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I informed the parties at the outset of the hearing that due to the requirements under Rule 2.3 that claims be related to each other, I was only going to hear the most urgent claim, which was whether the tenancy would continue and if not, whether the Landlord was entitled to an Order of Possession and if the Tenant was entitled to a rent reduction for repairs, services, or facilities agreed upon but not provided by the Landlord.

The following issues were dismissed with leave to reapply:

- suspension or conditions on the landlord's right to enter the rental unit or site

Leave to reapply is not an extension of any applicable time limit.

Issues to be Decided:

- Is the Tenant entitled to the cancellation of the 10 Day Notice?
- Is the Landlord entitled to an Order of Possession based on a 10 Day Notice?
- Is the Landlord entitled to recover unpaid rent under section 67 of the Act?
- Is the Tenant entitled to a rent reduction for repairs, services, or facilities agreed upon but not provided?
- Is the Landlord entitled to recovery of the filing fee?

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 parties agreed that this tenancy agreement began on May 1, 2022, with the monthly rent currently at \$1,200.00, due on the first day of the month.

A security deposit in the amount of \$600.00 was initially paid, and the parties confirmed that the Tenant used the full amount of the security deposit towards the Tenant's rent for December 2023. The Landlord submitted into evidence a bank statement for the

period between November 18, 2023 and December 16, 2023 showing that the Tenant e-transferred \$600.00 on December 4, 2023 being the remaining balance for December 2023 rent.

The Landlord posted the 10 Day Notice on the Tenant's door on May 14, 2024, and the Tenant confirmed receipt on that date.

The Tenant disputed the notice on July 26, 2024, outside the time permitted and seeks an extension of the time limit to dispute the 10 Day Notice.

The Landlord submitted a copy of the 10 Day Notice (RTB-30 form) into evidence. The effective date is May 24, 2024. It states the Tenant failed to pay rent in the amount of \$1,200.00 due on May 1, 2024.

The Tenant said he paid May 2024 rent with a bank draft as the internet at his rental unit stopped working on April 27, 2024, which he had contacted the Landlord about. The Tenant said he relies on the internet provided by the Landlord to e-transfer his monthly rent to them.

The Tenant said he left a letter enclosing the bank draft in the Landlord's mailbox on May 1, 2024 and that the Landlord sent him a message acknowledging receipt.

The Tenant submitted into evidence a copy of the letter and the bank draft that he left in the Landlord's mailbox. The letter states:

To: [landlord]

Re: Rent and Internet @ [rental unit]

Enclosed is a money order for the \$1,200 – rent. I have not sent you an e-transfer as per usual as you have cut off my internet on the morning of Saturday 27 April.

Following the advice of Residential Tenancy I am asking for the internet access, which is included in my rent, to be restored as soon as possible. If you choose to not restore my internet access within 3 business days (that is by Monday 6 May) I will be seeking compensation for the cost of internet service. In either event I will be asking for compensation for the loss of service period.

This will be attached to the active RTB file.

Please text me your answer. Thank you.

The Landlord said that they only received the Tenant's letter and did not receive a bank draft from the Tenant.

The Tenant submitted into evidence a text message acknowledging receipt from the Landlord on May 1, 2024. The message states:

Hey [Tenant] hope you are doing well, I received your letter and I would happy be [sic] happy to give you the Internet access as soon as you can show me where it says it's included in your rent in the agreement of course.

The Tenant argued that if the Landlord had only received the letter and not the bank draft, the Landlord would have asked the Tenant about the bank draft as the letter clearly indicated that a bank draft in the amount of \$1,200.00 was enclosed with the letter.

The Tenant testified that he went back to the bank on or about May 4, 2024 and the bank representative said the bank draft had not been deposited. The Tenant said he did not take any further action as he was busy with work and he thought the Landlord would deposit the bank draft when they want to.

The Landlord's agent confirmed that May's rent remains outstanding and that they have received rent for June, July and August 2024.

The Tenant said internet was included with the tenancy. The Tenant testified that the parties verbally agreed that the Landlord would provide internet service to the Tenant and for this reason, the Landlord had provided her modem password to the Tenant about three weeks into the tenancy.

The Tenant testified that he had to obtain internet service himself at the cost of \$85.13 per month and that he was charged \$127.30 for the first month as there was an initial set up fee.

The Landlord said the tenancy agreement did not indicate that internet service was included.

The Tenant applied for a rent reduction for services agreed upon but not provided.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The Landlord has the onus of proof.

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

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).

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

I accept the uncontested testimony that the Landlord served and the Tenant received the 10 Day Notice on May 14, 2024, in accordance with section 88 of the Act. I find the Tenant had until May 19, 2024 to dispute the 10 Day Notice or to pay the full amount of the arrears, per section 46(5) of the Act.

The Tenant disputed the notice on July 26, 2024, outside the time permitted and seeks an extension of the time limit to dispute the 10 Day Notice.

Residential Tenancy Branch Policy Guideline 36 states that an arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a notice to end a tenancy and may not extend the time within rent must be paid without the consent of the landlord. As the Tenant failed to dispute the notice before the effective date of the notice, I dismiss the Tenant's application for a time extension pursuant to section 66(3) of the Act.

The landlord applied for an order of possession on July 17, 2024

I have reviewed the 10 Day Notice and note that it is in the approved form, signed and dated by the Landlord and that it indicates that there is unpaid rent. I find that it complies with section 52 of the Act.

In accordance with section 46(5) of the Act, due to the failure of the Tenant to take either of these actions within five days, I find the Tenant is conclusively presumed to have accepted the end of this tenancy on May 24, 2024, the effective date of the 10 Day Notice. In this case, the Tenant and anyone on the premises were required to vacate the premises by May 24, 2024.

Therefore, I find that the Landlord is entitled to an Order of Possession based on a 10 Day Notice under sections 46 and 55 of the Act.

Policy Guidelines 54 provides factors that an arbitrator may consider when determining an effective date including the point up to which the rent has been paid, the length of the tenancy, and whether the tenant has pets or children.

Considering the length of this tenancy and the point up to which the rent has been paid, I find that an order of possession with an effective date of September 30, 2024 is appropriate.

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.

The Landlord said that they have not received any rental payment for the month of May 2024 and that the unpaid rent stated in the 10 Day Notice remains outstanding. The Landlord submitted into evidence her bank statement for the period between April 18, 2024 and May 17, 2024 to show that no rental payment was received for May 2024.

The Landlord testified that they received the Tenant's letter in their mailbox on May 1, 2024, but not the bank draft.

Although the Tenant submitted into evidence a photo of the bank draft and the letter that he asserts was left in the Landlord's mailbox on May 1, 2024, I find that the Tenant had not established on a balance of probabilities that the bank draft was included with the letter and left in the Landlord's mailbox. The Tenant did not provide any witness statements, photos or video clips in support of his claim.

Furthermore, I find that the Landlord's text message to the Tenant acknowledging receipt only confirmed receipt of the letter and not the bank draft. While I agree with the Tenant that the letter clearly stated that a bank draft is enclosed with the letter and therefore the Landlord should have enquired with the Tenant when the bank draft was missing, I find this does not prove that the bank draft was there.

I find that the Tenant could have enquired with the Landlord about the bank draft when the Landlord issued the 10 Day Notice on May 14, 2024.

I also find that the Landlord's text messages from June 2024 showing that she continued to ask for May's rent are clear indication that the Landlord did not receive any payment for May's rent. As such, I find the Landlord has established a claim for unpaid rent in the amount of \$1,200.00 being the rent for May 2024.

Based on the Landlord's testimony and the 10 Day Notice, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 26 of the Act, in the amount of \$1,200.00 for May 2024.

Is the Tenant entitled to a rent reduction for repairs, services, or facilities agreed upon but not provided?

Section 27 of the Act states that a landlord must not terminate or restrict a service of facility if the service of facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement.

Section 65(1)(f) of the Act states that if the director finds that a landlord has not complied with the Act, the regulations or tenancy agreement, the director may make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Though the Landlord denied that internet service was included in the tenancy agreement, I find that there is a verbal agreement between the parties that internet would be included in the tenancy as there was no reason for the Landlord to provide her modem password to the Tenant if it wasn't included. As such, I find that the Landlord breached the parties' verbal agreement by disconnecting a service that was included in the rent. I find that a monthly rent reduction of \$100.00 would be reasonable in the circumstances.

I find a past rent reduction for internet service of \$100.00 per month would be reasonable in the circumstances. This rent reduction shall be applied retroactively from May 2024.

Pursuant to section 65(1)(f) of the Act, I order that the Tenant is entitled to a rent reduction for internet service of \$100.00 per month from May 2024. I therefore grant the Tenant a retroactive rent reduction of \$400.00 for the last four months. The Tenant is also entitled to a rent reduction of \$100.00 for September 2024 rent.

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.

I grant the Landlord a Monetary Order in the amount of **\$100.00** for the cost of the filing fee.

Conclusion

I grant an Order of Possession to the Landlord **effective by 1:00 PM on September 30, 2024, 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 **\$900.00.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 48 of the Act	\$1,200.00

less: a retroactive reduction in rent for services agreed upon but not provided under 65 of the Act	-\$400.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$900.00

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 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 10 Day Notice) under sections 46 and 66 of the Act is dismissed, without leave to reapply.

The Tenant's application 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 is granted.

The Tenant's application for an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act is dismissed, without leave to reapply, as I ordered the tenancy ended.

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 6, 2024

Residential Tenancy Branch