# **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 End of Employment (One Month Notice) under section 48 of the Act
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 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 for the Landlord to make repairs to the rental unit under sections 32 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
- authorization to change the locks to the rental unit under section 70(2) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

and 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

No one attended the hearing for the Tenant.

Landlord M.N. and Agent A.S. attended the hearing for the Landlord.

## Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord submits that they served the Proceeding Package to the Tenant by posting a copy of the documents to the door of the rental unit, and by email to an email address provided for service on August 15, 2024. They provided a photograph of the documents taped to the door and a copy of the email and attachments sent to the Tenant as proof of service. I find that the Tenant was served with the Proceeding Package on August 18, 2024, the third day after it was posted to their door and sent to their pre-approved email in accordance with sections 89(2) and 90 of the Act.

The Landlord submits that they did not receive the Proceeding Package from the Tenant and that they learned of the applications from the Residential Tenancy Branch directly. I find that the Landlord was not served with the Proceeding Package as required by the Act and the Rules of Procedure.

## Service of Evidence

The Landlord was unclear on whether the evidence submitted to the Residential Tenancy Branch in support of their application had been served to the Tenant. They suggested evidence was provided to the Tenant on various dates in August through the Tenant's case worker. I find the Landlord failed to serve the Tenant with their evidence in accordance with section 88 of the Act and did not consider it.

The Tenant submitted evidence to the Residential Tenancy Branch in support of their applications, but the Landlord submits they did not receive evidence from the Tenant. I find that the Landlord was not served with the evidence as required by the Act and Rules of Procedure and did not consider it.

## Preliminary Matters

### Tenant's Applications Dismissed

As said above, the Tenant applied for numerous remedies under the Act and submitted evidence in support of their applications to the Residential Tenancy Branch but failed to serve the Proceeding Package or evidence to the Landlord. The Tenant then failed to attend the hearing. I am satisfied that the Tenant knew of this hearing as they were provided notices by the Residential Tenancy Branch for their own applications and were served by the Landlord with notice of their cross-application for the same date and time.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure says that if an applicant cannot demonstrate that the respondent was served as required by the Act and the Rules of Procedure, the director may dismiss it. For this reason, the Tenant's applications are dismissed in their entirety, without leave to reapply.

### Adjust Rent Claim

At the outset of the hearing the Landlord sought to increase their monetary claim for unpaid rent from $900.00 to $1,800.00 to reflect the Tenant's failure to pay $900.00 in

monthly rent for September 2024, the additional month of unpaid rent waiting for this hearing.

Rule 7.12 of the Rules of Procedure 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. I allow the amendment as this was clearly rent that the Tenant would have known about and resulted since the Landlord submitted the application.

## Issues to be Decided

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

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

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

## Background and Evidence

The Landlord submits that the formal tenancy agreement began June 1, 2024, but that the Tenant was not provided access to the unit until June 4, 2024, because she failed to pay rent for the first month until that date. The monthly rent for this tenancy is $1,500.00 due on the first day of the month and the Tenant paid a security deposit in the amount of $750.00 on May 27, 2024.

The Landlord submits that an outside organization pays a $600.00 portion of the rent directly to the Landlord each month and that the Tenant is responsible to pay the remaining $900.00. The Landlord submits that on July 31, 2024, the Tenant through their caseworker said that they would be unable to pay the $900.00 for rent on August 1, 2024.

The Landlord in response issued the 10 Day Notice on August 1, 2024, and served it by email to an address provided on the tenancy agreement for service, and by posting a copy to the door of the rental unit on that date.

The Tenant did not dispute the 10 Day Notice or pay the arrears.

The Landlord submits that the Tenant further failed to pay rent on September 1, 2024, and continues to reside in the unit to the date of the hearing.

## Analysis

### 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 does 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).

I find that the 10 Day Notice was received by the Tenant on August 4, 2024, the third day after it was posted to their door and sent to their pre-agreed email in accordance with sections 88 and 90 of the Act, and that the Tenant had until August 14, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears.

Based on the oral testimony of the Landlord, I find the Tenant failed to pay the rent in arrears within five days of receiving the 10 Day Notice and did not make an application under section 46(4) of the Act within the same timeframe. 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 August 13, 2024, the effective date on the 10 Day Notice. In this case, the Tenant and anyone on the premises were required to vacate the premises by August 13, 2024.

I note that the 10 Day Notice is dated August 1, 2024, which is the day that rent was due. Section 46(1) of the Act says that a 10 Day Notice may be issued on any day **after** rent is due [emphasis added]. I accept that the Tenant had communicated with the Landlord through their caseworker on July 31, 2024, that they would not be making their rent payment in full on August 1, 2024. As I am satisfied that the Tenant understood the intention of the 10 Day Notice and had previously indicated their inability to pay rent for the month of August 2024, I find it reasonable to amend the notice pursuant to section 68(1) of the Act.

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.

The Landlord seeks possession of the rental unit as soon as possible. Residential Tenancy Policy Guideline 54 provides guidance on determining the effective date of an Order of Possession. It suggests an arbitrator consider, among other things, the point up to which the rent has been paid, the length of the tenancy, and whether the Tenant has pets or children.

This is a very new tenancy, and the Tenant has failed to pay rent in full for the months of August and September 2024. I am told by the Landlord that the Tenant has cats and is working with a community organization to secure alternate housing. In the absence of submissions from the Tenant, I order possession of the rental unit effective seven (7) days after service of this order to the Tenant, at 1:00 pm on that day.

**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 in the amount of $900.00 for August 2024 and $900.00 for September 2024, for a total of $1,800.00.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of $1,800.00.

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security deposits in the amount of $750.00, plus interest in the amount of $6.75 (calculated from May 27, 2024, to September 25, 2024) as partial satisfaction of the monetary award.

**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.

## Conclusion

The Tenant's applications are dismissed in their entirety, without leave to reapply.

I grant an Order of Possession to the Landlord effective **seven (7) days after service of this Order on the Tenant, at 1:00 pm on that day**. 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.

I grant the Landlord a Monetary Order in the amount of **$1,143.25** under the following terms:

| Monetary Issue | Granted Amount |
|---|---|
| a Monetary Order for unpaid rent under section 67 of the Act | $1,800.00 |
| authorization to retain the Tenant's security deposit in partial satisfaction of the Monetary Order | -$756.75 |
| authorization to recover the filing fee for this application from the Tenant under section 72 of the Act | $100.00 |
| **Total Amount** | **$1,143.25** |

The Landlord is 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).

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 26, 2024

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Residential Tenancy Branch