

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 mutual agreement to end the tenancy under sections 44 and 55 of the Act
- An Order of Possession based on the Tenant's written notice to end the tenancy under sections 45 and 55 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 the Tenant A.T.'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
- An order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- An order allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenants were served on July 27, 2024, in person in accordance with section 89(1) of the Act.

Service of Evidence

Based on the submissions before me, I find that the Landlords' evidence was served to the Tenants in accordance with section 88 of the Act.

No evidence was received by the Residential Tenancy Branch from the Tenants.

Preliminary Matters

The following issue is dismissed with leave to reapply:

- An order allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act

Residential Tenancy Branch Rules of Procedure, Rule 2.3, states 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 am exercising my discretion to dismiss these issues identified in the application with leave to reapply as this matter is not related. Leave to reapply is not an extension of any applicable time limit.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a mutual agreement to end the tenancy?

Is the Landlord entitled to an Order of Possession based on the Tenant's written notice to end the tenancy?

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

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

Is the Tenant entitled to an order regarding the Tenant's dispute of a rent increase?

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.

Evidence was provided showing that this tenancy began on April 1, 2024, with a monthly rent of \$1,600.00, due on the seventh day of the month. Tenant A.T. and Tenant A.M. were co-tenants listed on the tenancy agreement.

The Landlord is seeking an Order of Possession based on a mutual agreement to end tenancy and written notice to end tenancy. Tenant A.T. is disputing a 10 Day Notice for Unpaid Rent and disputing a rent increase.

Mutual Agreement to End Tenancy and Written Notice to End Tenancy

The Landlord's position is that Tenant A.M. signed a mutual agreement to end tenancy and provided written notice to end the tenancy for July 31, 2024. The Landlord advised Tenant A.M. moved out of the rental unit and no new tenancy agreement was signed with Tenant A.T. A copy of the mutual agreement to end tenancy and written notice were provided as evidence.

The position of Tenant A.T. is that they were not informed by Tenant A.M. that they were ending the tenancy and Tenant A.T. wanted to keep the original tenancy agreement with the Landlord but the Landlord would not agree.

10 Day Notice

The Landlord's position is that a 10 Day Notice for Unpaid rent was given on August 8, 2024, for August 2024 unpaid rent of \$1,600.00 (the 10 Day Notice). The Landlord's position is that rent was not paid for August 2024 and Tenant A.T. continued to occupy the rental unit and did not pay rent for September 2024. The Landlord provided a e-transfer history of the rent payments.

The position of Tenant A.T. is that they received the 10 Day Notice on August 11, 2024, and they paid rent in cash for August 2024. Tenant A.T. argued they normally pay rent by e-transfer, but they have a limit on their e-transfer amount and could not e-transfer \$1,600.00. The Tenant's witness (the Tenant's Witness) argued that they were present on August 7, 2024, when Tenant A.T. gave cash rent to the Landlord. Tenant A.T. argued they did not pay rent for September 2024 because they incurred expenses due to the Landlord removing Tenant A.T. from the rental unit for 7 days.

The Landlord disputes ever receiving cash rent or meeting with the Tenant on August 7, 2024. The Landlord argued they only ever accept e-transfer for rent payment and the Tenants have only ever paid rent through e-transfer.

Rent Increase

Tenant A.T. advised no new rent increase has been imposed.

The Landlord advised the parties discussed a new tenancy agreement with a new rent amount, but it was never agreed to by the parties or imposed.

Analysis

Is the landlord entitled to an Order of Possession based on a mutual agreement to end the tenancy? Is the landlord entitled to an Order of Possession based on the Tenant's notice to end the tenancy?

As stated in Policy Guideline #13, a tenancy may end if the landlord and any tenant or co-tenant mutually agree in writing to end the tenancy or by a tenant giving a landlord written notice. When a tenancy ends in these circumstances, the notice or agreement to end the tenancy applies to all co-tenants, as per Policy Guideline #13. If a co-tenant wishes to remain in the rental unit after a notice to end tenancy has been given the landlord must agree to the tenant staying and they must enter into a new tenancy agreement.

Based on the testimony and evidence of both parties, I find that Tenant A.T. and Tenant A.M. were co-tenants and co-tenant A.M. ended the tenancy through both a mutual agreement to end tenancy and written notice to the Landlord. As such, the tenancy ended for both Tenant A.M. and Tenant A.T. Based on the testimony of both parties the Landlord and Tenant A.T. did not enter into a new tenancy agreement.

Therefore, I find that the Landlord is entitled to an Order of Possession based on a mutual agreement to end the tenancy and written notice to end the tenancy under sections 44 and 55 of the Act.

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

Given that I have found the tenancy ended under the mutual agreement to end tenancy and written notice by co-tenant A.M. and no new tenancy was entered into with co-tenant A.T., the 10 Day Notice is moot. I will still consider if any compensation is owed for overholding. Policy Guideline #3 states that if a tenant continues to occupy the rental unit after the tenancy has ended (overholds), the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the Act.

Both parties have given a different version of events regarding if anything was paid for August 2024. Where one party provides a version of events in one way and the other party provides an equally probably version of events, without further evidence, the party with the burden of proof has not met the onus.

The evidence of Tenant A.T. is that they gave the Landlord cash on August 7, 2024, and the Tenant's Witness testified they were present when the cash was given. The Landlord denies ever receiving cash or speaking to Tenant A.T. on August 7, 2024. The Landlord argued they only accept e-transfer for rent. Both parties advised during the tenancy the Tenants always paid rent by e-transfer.

In this case, I accept the Landlord's testimony over Tenant A.T. and the Tenant's Witness. The Landlord provided in evidence a history of e-transfer payments which supports that rent was always paid by e-transfer. Further, Tenant A.T. did not submit any documentary evidence, for example any bank statements to show the withdrawal of the rent money.

Therefore, I find that the Landlord is entitled to recover \$1,600.00 for Tenant A.T. overholding the unit for August 2024. Additionally, I find that Tenant A.T. has continued to overhold the rental unit for September 2024. Therefore, I find the Landlord is entitled to a Monetary Order for \$3,200.00.

Is the Tenant entitled to an order regarding the Tenant(s) dispute of an additional rent increase by the Landlord?

Based on the testimony of both parties no rent increase was imposed. As such, there is no rent increase to dispute. I dismiss the Tenant's application to dispute a rent increase without leave to reapply.

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

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

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 Tenants**. Should the Tenants 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 **\$3,300.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act for the Landlord	\$3,200.00
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act for the Tenants	\$100.00
Total Amount	\$3,300.00

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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.

Tenant A.T.'s application is dismissed in its entirety, 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 18, 2024

Residential Tenancy Branch