

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Landlord and the Tenant under the *Residential Tenancy Act* (the "Act"):

The Tenant's Application for Dispute Resolution, filed on July 31, 2024, is for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act

The Landlord's Application for Dispute Resolution, filed on August 2, 2024, is 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; and
- recovery of the filing fee

Tenant C.M. and Tenant's Agent E.L. attended the hearing for the Tenant
Landlord P.S.C. and Landlord's Agent/ translator C.G. attended the hearing for the Landlord

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

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

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

Service of Evidence

The Tenant acknowledged receipt of the Landlord's evidence from the Residential Tenancy Branch. In accordance with section 71(2)(b), I find that the Landlord's evidence was sufficiently served to the Tenant in accordance with section 88 of the Act.

The Landlord acknowledged service of the Tenant's evidence, with the exception of the written submission. The Tenant agreed to testify to these submissions, and I did not rely

on the submitted document as evidence under rule 3.17. I find that the Tenant's other evidence was served to the Landlord in accordance with section 88 of the Act.

Issues to be Decided

Is the tenant entitled to more time to cancel the 10 Day Notice? Should the Landlord's 10 Day Notice be cancelled?

Is the Landlord entitled to an Order of Possession?

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.

Evidence was provided showing that this tenancy began on January 1, 2014, the monthly rent is \$950.00 due on the first day of the month, with a \$650.00 security deposit.

The Landlord's Agent testified that the Tenant did not pay rent on June 1, 2024, when it was due and made only a partial payment on June 20, 2024. The Tenant did not pay rent again on July 1, 2024. The Landlord issued two 10 Day Notices to End Tenancy on July 24, 2024. The first 10 Day Notice claims that the Tenant has \$950.00 arrears of rent due on July 1, 2024, the second states that the Tenant has \$250.00 due on June 1, 2024 (the "10 Day Notices".) The Landlord did not know that he was supposed to indicate the total amount of the arrears on one notice, so he issued two separate notices.

The Tenant was in the hospital for a period of time after receipt of the 10 Day Notices. The Tenant testified that she went with a support worker to pay the arrears of rent on June 30, 2024, but the Landlord refused to accept it. The Tenant then filed this application the next day.

The Landlord testified that the Tenant met the Landlord on July 30, 2024, but did not offer to pay rent. Instead, the Tenant asked the Landlord if the Tenant would still have to move out if she paid the arrears that day. The Landlord told the Tenant they had missed the deadline to pay the rent arrears and would have to move out no matter what.

The Tenant and Landlord agree that the Tenant paid the \$1,200.00 arrears on August 1, 2024. The Landlord provided the Tenant a receipt which stated that it was for rent owing for June and July for occupancy and use only. On August 3, 2024, the Tenant paid August rent, and the Landlord issued another receipt stating it was for occupancy and use only. The receipts were submitted as evidence.

The Tenant acknowledged she was beyond the five day deadline when she tried to pay the arrears, and when she made her application. The Tenant testified that she was in the hospital for a period of time during those 5 days. The Tenant did not provide any proof of her hospitalization.

The Landlord testified that if he was successful, he would like an Order of Possession effective two weeks from the date of the order. The Tenant testified about her struggles finding adequate housing and requests the effective date for an Order of Possession be three months from the date of the order. Further, the Tenant's Agent stated that, as the rent is paid in full, and the Tenant will continue to pay the rent, there is no prejudice to the Landlord in allowing the Tenant three months to vacate the premises. The Tenant's Agent stated that the Tenant has taken good care of the rental unit during her tenancy.

Analysis

Is the tenant entitled to more time to cancel the 10 Day Notice? Should the Landlord's 10 Day Notice be cancelled?

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 Notices were duly served to the Tenant on July 24, 2024, and that the Tenant had until July 29, 2024, to dispute the 10 Day Notices or to pay the full amount of the arrears of \$1,200.00. The Tenant attempted to pay the arrears on June 30, 2024, and applied to dispute the 10 Day Notices on July 31, 2024, after the deadline had expired.

Section 66 of the Act states that a time limit established by this Act may only be extended in exceptional circumstances. Residential Tenancy Policy Guideline 36 states that the word "exceptional" implies the reason for failing to meet the deadline is very strong and compelling, for example if the party was in the hospital at all material times.

Section 66(2)(a) of the Act states that the time limit established by section 46 of the Act for a tenant to pay overdue rent after receipt of a 10 Day Notice, may be extended **only** if the extension is agreed to by the Landlord, or if the Tenant deducted the unpaid amount because the Tenant believed that the deduction was allowed for emergency repairs or under an order of the director. I find that neither circumstance is present here and I have no discretion to extend the time limit for the Tenant to pay overdue rent.

The parties agreed that the Tenant had overdue rent on July 24, 2024, when the 10 Day Notice was issued. Regardless of whether I allow the Tenant an extension to dispute the 10 Day Notices, they are still valid, and I have no discretion to extend the time to pay the overdue rent so the conclusive presumption of section 46 of the Act must apply.

For the above reasons, the Tenant's application for cancellation of the Landlord's 10 Day Notices to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act is dismissed, without leave to reapply.

Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states that, if the Landlord's notice to end tenancy complies with section 52 of the Act, the director must grant the Landlord an order of possession if the Landlord's notice to end tenancy is upheld during the dispute resolution proceedings. I have reviewed the Landlord's 10 Day Notice, and I find it complies with section 52 of the Act. I have upheld the Landlord's 10 Notices. Accordingly, the Landlord is granted an Order of Possession.

Residential Tenancy Policy Guideline 54 states that the effective date for orders of possession, when the effective date of the notice to end tenancy has already passed, have generally been set for seven days after the order is received. Further it states that the arbitrator has the discretion to set the effective date of the order of possession based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

I accept the Tenant's submission that the Landlord will not be prejudiced by an extended period of time for the Tenant to vacate the rental unit. The Tenant is up to date on the rent and has testified that she will continue to pay it. This tenancy started over ten years ago, and the Tenant testified about the struggles she will have to find alternate housing.

To balance the interest of both parties and in consideration of all the circumstances, I grant the Landlord an Order of Possession effective October 31, at 1:00 p.m.

Is the Landlord entitled to recovery of the filing fee?

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the Landlord **effective October 31, 2024 at 1:00 p.m. after service of this Order on the Tenant.** 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 **\$100.00** under the following terms:

Monetary Issue	Granted Amount
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$100.00

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 Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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 11, 2024

Residential Tenancy Branch