

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 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice)
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice)
- an order to allow access to or from the rental unit for the Tenant or the Tenant's guests
- an order to suspend or set conditions on the Landlord's right to enter the rental unit
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement
- authorization to recover the filing fee for this application from the Landlord

Preliminary Matters

Section 64(3)(c) of the Act allows the arbitrator to dismiss issues with or without leave to reapply.

Both parties testified that the Tenant moved out of the rental unit on August 16, 2024, in accordance with a settlement reached and Order of Possession issued after a previous hearing. Therefore, the following issues are dismissed without leave to reapply, as they are no longer relevant now that the tenancy has ended.

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause
- an order to allow access to or from the rental unit for the Tenant or the Tenant's guests
- an order to suspend or set conditions on the Landlord's right to enter the rental unit
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement

As the Tenant has moved out of the rental unit, the Landlord does not seek an Order of Possession based on the 10-day notice. The Landlord seeks the return of unpaid rent.

The Landlord requested to amend the amount of unpaid rent as claimed on the 10-day notice, to include unpaid rent for the months of December 2022, October 2023, and November 2023. The Landlord claims they identified these months of unpaid rent in their evidence package served to the Tenant on August 23, 2023, so the Tenant was given reasonable notice that the Landlord would be seeking unpaid rent for these months as well as the months on the 10-day notice.

I find that while the Tenant was notified of the Landlord's intention to seek unpaid rent for these months, they were not notified in time to submit additional evidence in response to these claims. I find it would be procedurally unfair and prejudicial to the Tenant to amend this application and allow the Landlord to claim unpaid rent for the months of December 2022, October 2023, and November 2023.

Therefore, I dismiss the Landlord's request to amend the application to increase the amount of unpaid rent to include the months of December 2022, October 2023, and November 2023.

The Landlord requested to amend the application to include unpaid rent on a per diem basis for the month of July 2024, for a total increase of \$2306.00 claimed.

Rule 7.12 of the *Rules of Procedure* allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated such as when the amount of unpaid rent has increased since the time of the application.

Section 64(3) allows the director to amend an application or permit an application to be amended. The landlord sought to amend the amount of unpaid rent claimed to include unpaid rent for the month after serving the notice to end tenancy.

I determined the tenant could reasonably anticipate this amendment and I allowed the landlord to amend his application to include rent on a per diem basis for the month of July 2024.

Issues to be decided

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?

Facts and Analysis

I have reviewed all of the evidence and testimony provided in this proceeding, but I will only refer to what I find relevant for my decision.

This tenancy began on September 1, 2022, with a monthly rent of \$3250.00 per month due the first day of each month, and with a security deposit of \$1625.00.

The Landlord issued the 10 Day Notice on August 1, 2024, and served it to the Tenant by attaching it to the door of the rental unit. The amount of unpaid rent claimed on the 10 Day Notice is \$6500 - \$2000 = \$4500.00.

The Landlord testified as follows. The Tenant failed to pay rent for the months of May and June 2024. The total unpaid rent was \$6500.00. However, the Tenant completed some work on the rental unit, including building new stairs and building a new kayak rack.

The Landlord testified that they never agreed in writing, or verbally, for the Tenant to deduct rent in exchange for work, nor did they authorize the Tenant to complete and repair or renovation work on the property. The Landlord claims they agreed to deduct \$2000.00 from the rent for this work as a gesture of good will, in acknowledgement of the time and money spent by the Tenant on the property, even though they never agreed or consented in advance to the work or rent reduction.

The Landlord claims the reason the Tenant completed the work on the property was to improve the property for their own gain by renting part of the property via Airbnb. The Landlord claims the Tenant, without authorization, added a living suite to the Landlord's garage/storage area, and advertised it on Airbnb. The Landlord claims the Tenant advertised the Landlord's personal kayaks, set on the new rack built by the Tenant without permission, as included with their Airbnb rental.

The Landlord claims \$2306.00 for rent due from July 1, to July 23, 2024. The Landlord testified that the Tenant essentially vacated the rental unit on July 23, 2024, though they returned to pick up their remaining belongings on August 16, 2024, after the tenancy ended. The Landlord claims the Tenant failed to pay any rent for July 2024. The Landlord seeks unpaid rent on a per diem basis for this month.

The Landlord provided the following documentary evidence to support their claims:

- bank statements for the months of May and June 2024, showing no rent received from the Tenant
- Airbnb rental advertisements by the Tenant for the garage suite
- Witness statements from neighbors to the rental unit regarding parties living in the Airbnb suite

The Tenant testified as follows. The Tenant claims they had an arrangement with the Landlord to complete work on the property throughout the tenancy in exchange for rent reductions. The Tenant claims they had the Landlord's verbal consent and authorization to complete work on the stairs, kayak rack, and property landscaping, and to deduct the amount spent from the rent in May and June 2024. The Tenant confirms they did not pay the rent for May and June 2024, as the total spent on the approved work was higher than the amount of rent owing for those months. The Tenant claims they paid the rent for July 2024.

The Tenant argues that they would not spend their own money to make improvements to the property without the Landlord's consent and agreed reduction of rent. The Tenant claims that although they listed the suite on Airbnb, they never rented it out or made any income through Airbnb. The Tenant provided invoices for work completed on the property including stairs, kayak rack, and landscaping as documentary evidence to support their claims.

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

Section 26 of the Act says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Act provides the following circumstances in which a Tenant may have a right to deduct all or a portion of the rent without the written consent of the Landlord:

- Section 19(2) of the Act: Overpaid security deposit or pet damage deposit
- Section 33(5) of the Act: Emergency repairs to the rental unit completed by the Tenant if the Landlord fails to complete the emergency repairs themselves
- Section 43(5): If the Tenant pays a rent increase that does not comply with the Act
- Sections 51 and 51.1: if the Tenant is given a notice to end tenancy under section 49 of the Act, or is required to vacate at the end of a fixed term tenancy
- Section 65 of the Act: If the Tenant is ordered to deduct rent by an Arbitrator

Based on the evidence and testimony of both parties, I find that none of the above-listed circumstances apply in this case. I find the Tenant did not provide any evidence that the Landlord agreed, in writing, to allow the Tenant to deduct any amount of rent for the months of May, June, or July 2024 for work completed on the rental property.

Based on the Landlord's evidence regarding the Tenant's Airbnb account, I find it likely that the Tenant made repairs to the stairs, built a new kayak rack, and completed landscaping without the Landlord's consent in order to improve the appeal of the property for Airbnb guests.

I find the Landlord's evidence shows the rental unit listed on Airbnb since 2022. I find it unlikely, on a balance of probabilities, that the Tenant did not rent the Airbnb suite to any other occupant during this period. I find it likely that the potential profit to the Tenant via Airbnb was the reason for the Tenant's work on the rental property.

I find the Landlord has proven, on a balance of probabilities, that the Tenant failed to pay rent for the months of May, June, and July 2024. The Tenant confirms they did not pay rent for the months of May and June 2024. The Tenant claims they paid the July 2024 rent, but I do not find this testimony credible as the Tenant claimed they deducted

the costs for thier work on the property, which based on the Tenant's evidence exceeds the amount of rent owed for the months of May and June.

I find the Landlord has proven their claim for July rent of \$2306.48 on a per diem basis for 22 days, calculated as follows:

$\$3250 / 31 \text{ days in July} = \104.84 per day

$\$104.84 \times 22 \text{ days} = \2306.48

Therefore, I find the Landlord is entitled to a Monetary Order of \$6806.48 for unpaid rent, under sections 55(1.1) and 67 of the Act.

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

As the Tenant was not successful in this application, the Tenant's application to recover the filing fee of \$100.00 from the Landlord is dismissed, without leave to reapply.

Conclusion

I grant the Landlord a Monetary Order of **\$6806.48** for unpaid rent, under sections 55(1.1) and 67 of the Act

The Landlord must serve this Order to the Tenant as soon as possible. If the Tenant does not pay, this Order may be filed and enforced in the Small Claims division of the Provincial 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 11, 2024

Residential Tenancy Branch