

DECISION

Introduction

This hearing dealt with cross applications including:

The Tenant's August 5, 2024, 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

The Landlord's August 9, 2024, 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 (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

The hearing was attended by the Landlord and his wife – both had the opportunity to provide sworn testimony and refer to evidence. The Tenants did not attend and were not represented.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord testified that the Tenants did not service Notice of their dispute on the Landlord. I reviewed the Tenants' file and find that no proof of service was provided and that the Tenants failed to service the Landlord with Notice of their claim as required by the Act and Rules of Procedure.

The Landlord testified that they became aware of this hearing because they filed their own application for a direct request for an Order of Possession regarding a 10-Day Notice to End Tenancy dated August 3, 2024, after which they were notified by the RTB that the Tenant had their own application to challenge the Notice.

The Landlord testified that they served the Tenants with Notice of the Landlord's dispute, by posting three identical packages to the door of the rental unit on August 16,

2024. The Landlord submitted sworn RTB-55 Declarations signed by a witness to confirm service to the door as is permitted by section 89(2)(c) of the Act.

I therefore deem the Tenants served with Notice of the Landlord's dispute application, three days later, on August 19, 2024, as required by section 90 of the Act.

Service of Evidence

The Landlord testified that they served paper copies of their evidence for this dispute within the packages that were served to the door of the rental unit, on August 16, 2024.

I therefore deem the Tenants served with copies of the Landlord's evidence related to this claim, three days later, on August 19, 2024, as required by section 90 of the Act.

Preliminary Matters

The Landlord sought to increase their claim for compensation for rent from \$1,800.00 to \$3,600.00 because rent for September has not been paid by the Tenants in the time since the Landlord filed their application. I allowed this amendment under RTB Rule of Procedure 7.12. because I find that this charge for rent is expected and could reasonably be expected.

Issues to be Decided

- Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession? Is the Landlord entitled to a Monetary Order for Rent?
- Is the Landlord entitled to recover the filing fee for this application?

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 residential property is a single-family dwelling that includes a separate side suite, on the left-hand side of the dwelling that was rented to the Tenants in May 2024.

Evidence was provided showing that this tenancy began on May 1, 2024, with the collection of a \$900.00 security deposit. The Landlord confirmed that monthly rent was set at \$1,800.00, due on the first of the month, with utilities paid separately by the Tenants.

The Landlord testified that the Tenants paid rent by ETransfer for May, June and July but have not paid rent for August (\$1,800.00) or September (\$1,800.00).

The Landlord referred to an RTB 30, 10-Day Notice dated August 3, 2024, that was served to the Tenants' door on the day it was issued. The Landlord also submitted an RTB 34- Proof of service declaration form to confirm that the Notice was served in person to the Tenant on August 3, 2024.

The 10-Day Notice identifies a stated move-out date of August 13, 2024, and that \$1,800.00 in rent was owing on August 1, 2024.

The Landlord testified that the Tenants remain in the rental unit.

Analysis

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

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).

I find that the 10 Day Notice was duly served to the Tenant on August 3, 2024, because the Landlord testified that the Notice was served in person to the Tenant J.O. on that day, and even submitted a photo of the Tenant receiving the Notice. The Landlord also submitted a signed sworn declaration of service on that day.

I therefore find that the Tenants had until August 8, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I find that the Tenants are conclusively presumed to have accepted the end of this tenancy on August 13, 2024, the stated move out of this Notice, and were expected to have vacated the rental unit on this day.

For the above reasons, the Tenants' application 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 is dismissed, without leave to reapply.

Is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession.

I use my discretion under RTB Policy Guideline 54 to make this Order effective seven (7) days after service of this Order on the Tenants. I do not provide any additional time to vacate because I find that the Tenants have failed to pay rent for the past two months and that the Landlord is therefore entitled to a timely Order of Possession.

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

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act.

I find that the Notice complies with section 52 of the Act.

I find the Landlord is entitled to a Monetary Order for unpaid rent in the full amount of \$1,800.00 for August. I will also provide a pro-rated award for rent for September 2024, through to the 17th because this is the day that the Landlord is expected to retain possession of the rental unit:

$\$1,800.00 \times 12 = \$21,600.00 / 365 = \$59.18$ per day for rent

$\$59.18 \times 17 = \$1,006.06$ owed for September

$\$1,006.06 + \$1,800.00 = \$2,806.06$

I find that the Landlord is entitled to a \$2,806.06 monetary order for rent under section 55(1.1.) of the Act.

I also find under 38(3) of the Act for simplicity that the Landlord is entitled to retain the Tenants' \$900.00 security deposit as partial satisfaction of their award for rent,

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

As the Landlord was successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is successful.

Conclusion

I grant an Order of Possession to the Landlord **effective seven (7) days 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 Order that the Landlord is entitled to a \$2,006.06 monetary order under the following terms:

Monetary award for rent under section 67 of the Act	\$2,806.06
Authorization to recover filing fee under section 72 of the Act	\$100.00
Authorization to retain security deposit under section 72 of the Act	-\$900.00
Total Award to Landlord	\$2,006.06

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 Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act is dismissed, 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 10, 2024

Residential Tenancy Branch