

## **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 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

This hearing also dealt with the Tenants' 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) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act

The Landlord attended the hearing. No one attended for the Tenants.

### **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 each served on August 14, 2024, by registered mail in accordance with section 89(1) of the Act. The Canada Post tracking numbers were provided and confirms service of the Proceeding Package on both Tenants.

### **Service of Evidence**

Based on the submissions before me, I find that the Landlord's 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 Tenants Vacated September 3, 2024

The Landlord advised the Tenants vacated the rental unit September 3, 2023 and returned the rental unit keys. As such, I find that the tenancy ended September 3, 2024 and a majority of both applications are moot. However, I will determine if any unpaid rent is owed.

## **Issues to be Decided**

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

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

## **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 May 1, 2024, with a monthly rent of \$2,150.00, due on the first day of the month, with a security deposit in the amount of \$1,00.000, paid May 2024.

The Landlord served the 10 Day Notice on August 2, 2024, via email for unpaid rent owed for August 2024 (the 10 Day Notice).

The Tenants originally filed to dispute the 10 Day Notice and for more time to dispute; however, the Landlord testified the Tenants vacated the rental unit September 3, 2024. The Landlord filed a cross application seeking a Monetary Order for unpaid rent and an Order of Possession based on the 10 Day Notice.

The undisputed testimony of the Landlord is that the parties did not have a written agreement to serve documents via email, but the parties had exchanged documents in the past via email and communicated about repairs via email. The Landlord provided copies of two emails sent from the Tenants to the Landlord. For example, the Landlord argued the Tenants sent the signed tenancy agreement to the Landlord via email and sent an email regarding repairs in June 2024. The Landlord also argued the Tenants filed to dispute the 10 Day Notice, which confirms they received the 10 Day Notice.

The Landlord argued they are seeking unpaid rent for August 2024 and that the Tenants continued to occupy the rental unit until September 3, 2024, and owe September 2024 rent. The Landlord argued the Tenants also did not pay the full security deposit requested and owe \$75.00 for the remaining amount of the security deposit.

## Analysis

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

Section 71 of the Act gives an arbitrator the authority to make an order for sufficient service of documents, even where the document was not served in accordance with section 88 or 89 of the Act. This provision in the Act overrides the requirement of “an email address provided as an address for service by the person”. This is not a situation where the Tenants claimed they did not receive the 10 Day Notice, rather the Tenants even filed to dispute the 10 Day Notice. Furthermore, I accept the undisputed testimony and evidence of the Landlord that the parties had previously exchanged documents and communication via email. On the authority of section 71(2)(b), I find that the Landlord completed service of the 10 Day Notice via email to the Tenants on August 2, 2024.

Based on the undisputed testimony of the Landlord I accept that the Tenants did not pay rent for August 2024 and occupied the rental unit until September 3, 2024. Therefore, I grant unpaid rent for August 2024 of \$2,150.00 and a pro-rated amount of \$215.00 for September 1, 2024 to September 3, 2024 ( $\$2,150.00/30 \times 3$ ) for a total of \$2,365.00.

I decline to award the Landlord the \$75.00 missing for the security deposit, as this application was for unpaid rent. Additionally, the tenancy has ended, and I find it is not necessary for the Tenants to pay the missing amount of the security deposit.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$2,365.00.

### 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 the Landlord a Monetary Order in the amount of **\$2,465.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$2,365.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$2,465.00</b>

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

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 12, 2024

---

Residential Tenancy Branch