

DECISION

Introduction

This hearing dealt with an application filed by both the Landlord and the Tenant pursuant to the Residential Tenancy Act (the “Act”):

The Landlord applied 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 and/or utilities 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 Tenant applied for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice pursuant to sections 46 and 66 of the Act
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to sections 27 and 65 of the Act
- an order for the landlord to make repairs to the rental unit pursuant to sections 32 and 62 of the Act
- an order for the landlord to provide services or facilities required by law pursuant to section 27 and 65 (f) of the Act
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70(1) of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62 of the Act
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act

Preliminary Matters

Unrelated issues

The following issues are dismissed with leave to reapply:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to sections 27 and 65 of the Act
- an order for the landlord to make repairs to the rental unit pursuant to sections 32 and 62 of the Act
- an order for the landlord to provide services or facilities required by law pursuant to section 27 and 65 (f) of the Act
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70(1) of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62 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. Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss these issues identified in the Tenant's application with leave to reapply as these matters are not related to the main issue in this dispute which is whether or not this tenancy is ending based on the 10-Day Notice. Leave to reapply is not an extension of any applicable time limit.

Increase unpaid rent claim

The Landlord sought to increase their monetary claim for unpaid rent to reflect the tenants' failure to pay rent due for the month of September.

Residential Tenancy Branch Rules of Procedure, Rule 4.2, states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as this was clearly rent that the Tenant would have known about and resulted since the landlord submitted the application.

Amend applications

The parties listed JA as a Tenant on their respective applications for dispute resolution. However, based on the testimony and evidence of the parties, I find that the parties never came to an agreement to add JA to the tenancy agreement. Rather, I find Tenant JK is the sole Tenant and JA is an occupant. For this reason, I have amended the parties' applications to remove JA as a Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord testified that they served the Tenant with the Proceeding Package containing their evidence by registered mail to the address of the rental unit on August 21, 2024. The Landlord testified that they sent two packages, one addressed to the Tenant and the other addressed to JA. The Landlord submitted Proof of Service documents and Canada Post Customer Receipt containing two tracking number in support of this service. The Landlord testified that they have resided at the property in the past and are very familiar with the address of the rental unit to which they sent the packages.

The Tenant denied having receive any registered mail from the Landlord.

A review of the Canada Post Tracking website shows that the packages associated with the Canada Post Tracking numbers were available for pick-up by the Tenant as early as August 23, 2024, and notice cards were left at the address indicated on the package on more than one occasion.

In this case, I find the Landlord provided detailed and credible testimony and documentary evidence to support the contention that their Proceeding Package was sent to the Tenant at the rental unit address. I prefer the Landlord's testimony over that of the Tenant who did not provide any reason as to why the packages sent to their address were not received. Residential Policy Guideline 12 states that tenant's failure to claim registered mail does not prevent an Arbitrator from deeming registered mail

received. Based on the foregoing, I find that the Tenant was served with the Proceeding Package on by registered mail on August 21, 2024.

Section 90 of the Act states that a document served in accordance with section 89 of the Act is deemed to be received if sent by registered mail on the fifth day after it is mailed. In this case, the Tenant is deemed to have received the Landlord's Proceeding Package on August 26, 2024, in accordance with section 90(a) of the Act.

The Landlord acknowledged receipt of the Tenant's Notice of Dispute Resolution Proceeding document by registered mail. On that basis, I accept that the Tenant served the Landlord's with the Notice of Dispute Resolution Proceeding document by registered mail.

Service of Evidence

The Landlord testified that all of their evidence was included with their Proceeding Package save for a document titled Attn_RTBA_Adjudicators_--letter. The Landlord conceded that they did not serve this document to the Tenant. Residential Tenancy Branch Rule of Procedure 3.14 requires that all evidence upon which an applicant, in this case the Landlord, intends to rely must be received by the respondent and Residential Tenancy Branch not less than 14 days prior to the hearing. As the Tenant was not served with the above noted document, I find it would not be procedurally fair to the Tenant for me to consider it. On that basis, I have excluded this document from my consideration when rendering a decision in this matter.

The Tenant testified that they believed they uploaded evidence to the Residential Tenancy Branch and served evidence to the Landlord with the Notice of Dispute Resolution Proceeding Document. The Tenant was advised that no evidence in support of their application was uploaded to the Residential Tenancy Branch website. The Tenant argued that proceeding with the hearing in the absence of their evidence would not be procedurally fair to them. The Tenant testified that they are not good with technology and should not be penalized for their inability to upload evidence.

The Landlord testified that they did not receive any evidence from the Tenant, but rather received only the 6-page Notice of Dispute Resolution Proceeding document by registered mail. The Landlord noted that each claim stated on the Notice of Dispute Resolution Proceeding document indicates: "No evidence submitted at time of application".

As previously stated, Residential Tenancy Branch Rule of Procedure 3.14 requires that all evidence upon which an applicant, in this case the Tenant, intends to rely must be received by the respondent and Residential Tenancy Branch not less than 14 days prior to the hearing. Rule of Procedure 3.5 requires that the applicant, in this case the Tenant, be prepared to demonstrate to the satisfaction of the director the respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure. In this case, I find the Tenant's testimony alone insufficient to demonstrate to my satisfaction that the Landlord was served with any evidence to support the Tenant's application, particularly in light of the Landlord's testimony to the contrary.

I have further considered the Tenant's assertion that they were unable to upload their evidence to the Residential Tenancy Branch website, because of their difficulties with technology. Importantly, the Tenant was not precluded from submitting evidence to the Residential Tenancy Branch by way of another method such as mail, courier or personal delivery to a Residential Tenancy Branch office. The Tenant made their application on August 20th, 2024, and had ample opportunity prior to the hearing scheduled for September 18, 2024, to do so and chose not to.

Based on the foregoing, I have proceeded with the hearing in the absence of any evidence from the Tenant.

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 unpaid rent and/or utilities under section 67 of the Act?

Is the Landlord entitled to authorization to recover the filing fee for this application from the Tenant under section 72 of the Act?

Is the Tenant entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

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 Landlord testified that the Tenant is their son and has lived at the property for approximately 2.5 years. The Landlord testified that the Tenant began paying monthly

rent in the amount of \$2,000.00 on April 4, 2022. The Tenant testified that they could not confirm this as they have not been able to check their records.

The Landlord testified that the Tenant pays an additional \$200.00 a month for hydro. The Landlord testified that when the Tenant pays their monthly rent by way of e-transfer they note that \$2,000.00 is for rent and \$200.00 is for utilities.

To the contrary, the Tenant testified that they have paid the additional \$200.00 to the Landlord monthly for some time, but disputed that they agreed to pay this amount for hydro.

The parties agreed that no written tenancy agreement exists. The Landlord testified that they did not authorize JA to reside at the rental property.

The parties agreed that the Landlord collected a security deposit in the amount of \$1,000.00 which they continue to hold in trust.

The Landlord testified that they served the 10-Day Notice to the Tenant by attaching it to the door of the rental unit on August 4, 2024. The Landlord submitted a video showing them attaching an envelope addressed to the Tenant to the door of the rental unit.

The Tenant testified that they did not receive the 10-Day Notice until much later than August 4th, 2024. The Tenant testified that they located the envelope behind a shoe rack near the door of the rental unit and suggested it fell or was knocked off the door.

The 10-Day Notice is submitted into evidence and indicates that it was issued because the Tenant failed to pay rent that was due on August 1, 2024, in the amount of \$2,200.00. The 10-Day Notice further indicates that the Tenant failed to pay utilities in the amount of \$818.72 following written demand on June 20, 2024.

The Landlord testified that since the 10-Day Notice was issued, the Tenant has failed to pay rent for September 2023. The Landlord testified that currently rent for August and September are outstanding. The Landlord is seeking a Monetary Order for unpaid rent in the amount of \$4,000.00.

The Tenant testified that they withheld rent in August because the Landlord issued a Two Month Notice to End Tenancy and they believed they were supposed to get one month's free rent based on the Two Month Notice. The Tenant conceded that they have not paid rent for September.

The Tenant argued that they do not believe they should be required to pay rent because the Landlord disconnected their hydro and they have been asking the Landlord to complete repairs which have not been completed.

The Tenant testified that the hydro has been in their name since July 10th, 2024. The Landlord agreed that they disconnected the hydro in July 2024.

The Landlord testified that since JA moved in, hydro charges have increased by 78%. Therefore, the Landlord is seeking repayment for the overage charges since January 2024 in the amount of \$818.72.

The Tenant testified that there was never an agreement in place regarding hydro. The Tenant testified that they paid an additional \$200.00 per month, but it was not for hydro. The Tenant testified that the increase in hydro usage could have been caused by the tenants living in the other unit at the rental property and noted that the rental property only has one hydro meter.

Analysis

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

Section 26 of the Act requires tenants to pay rent on time whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless they have a lawful right to deduct all or a portion of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent. A 10 Day Notice issued under section 46 of the Act must comply with section 52 of the Act.

Based on the testimony and video evidence of the Landlord, I accept that the 10-Day Notice was posted to the door of the rental unit on August 4, 2024. The Tenant applied to dispute the 10-Day Notice and for an extension of the time limit to dispute the 10 Day Notice claiming that they did not receive the 10-Day Notice until much later. Even if I were to accept that the Tenant's did not received the 10-Day Notice until well after August 4, 2024 and extend the time limit to dispute the 10-Day Notice, for the following reasons, I grant the Landlord's application for an Order of Possession and uphold the 10-Day Notice.

I have reviewed the 10-day Notice and find that the 10 Day Notice complies with section 52 of the Act. The parties agree that the Tenant did not pay rent for the month of August.

There are six lawful reasons that a Tenant may withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenants withholding rent.

I infer from the Tenant's testimony that they are alleging that point 4 as stated above applies to their circumstances. However while section **51**(1) of the Act state that a tenant who receives a notice to end a tenancy under section 49 is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement, section 51(1.1) describes that a tenant may withhold the amount authorized from the **last** month's rent. In this case, it is evident to me because the tenancy has continued beyond the month of August, that the Tenant did not lawfully withhold the last month's rent. For this reason, I find that the Tenant has not established that they had a lawful reason to withhold rent because the landlord issued a notice to end tenancy under section 49 of the Act.

Importantly, I make no findings as to whether a notice to end tenancy under section 49 of the Act was issued to the Tenant.

Further, while the Tenant took issue with repairs not completed at the rental property, the Tenant has not established that section 33 of the Act applies to their circumstances.

Finally, while the Tenant took issue with the Landlord disconnecting the hydro, as previously stated, a Tenant is required to pay rent whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Therefore, I find the Tenant did not have legal authority to withhold rent because the Landlord disconnected the hydro.

Ultimately, I find that the Tenant has not established that they had a lawful reason to withhold rent under the Act.

Therefore, I find that the 10-Day Notice was given for a valid reason, namely, the non-payment of rent.

Based on the above findings, the Landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant. The Tenant has seven days to vacate the rental unit from the date of service or deemed service.

Because I have granted the Landlord's application for an Order of Possession, the Tenant's application for cancellation of the landlord's 10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice pursuant to sections 46 and 66 of the Act is dismissed without leave to reapply.

Is the Landlord entitled to a Monetary Order for unpaid rent and/or utilities under section 67 of the Act?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the testimony and evidence of the parties, I find that monthly rent during the Tenancy is \$2,000.00. I find the Landlord's evidence that the Tenant agreed to pay an additional \$200.00 for utilities detailed, persuasive and consistent with their documentary evidence. I find the fact that the Tenant paid the additional amount for many months supports that an implied agreement regarding the provision of hydro at a cost of \$200.00 a month during the tenancy was in place.

The parties agree that the Tenant has not paid rent for August or September. On that basis, I find that the Landlord has established their claim for unpaid rent in the amount of \$4,000.00 for August and September 2024.

The Landlord is seeking \$818.32 for utility overage charges. However, I have previously found that an implied agreement for the provision of hydro at a cost of \$200.00 per month existed between the parties. I find that the Tenant at no point by actions or in writing agreed to pay hydro costs in amount above \$200.00 per month. Rather, I find it was implied that the \$200.00 covered the hydro costs in full. For this reason, I find the Landlord has not established their claim for hydro overage charges based on actual usage as it was never agreed that the Tenant pay an amount above the agreed \$200.00 per month.

On that basis, the Landlord's has not established their claim in the amount of \$818.32 for unpaid utilities. The Landlord's application for unpaid utilities is dismissed without leave to reapply.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$4,000.00.

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

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.

Is the Tenant entitled to authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

As the Tenant was unsuccessful in their application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for their application from the Landlord. The Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord **effective seven (7) days after service of this Order on the Tenant**. Should the Tenant 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 **4,100.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$4,000.00
authorization to recover the filing fee for this application from the tenant under section 72 of the Act	\$100.00
Total Amount	\$4,100.00

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 *Residential Tenancy Act*.

Dated: September 23, 2024

Residential Tenancy Branch