

DECISION

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenants applied 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
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act

The Landlord applied for:

- an Order of Possession based on the 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 Tenants under section 72 of the Act

Landlord S.C. and Advocate N.G. attended the hearing for the Landlord.

No one attended the hearing for the Tenants. I left the teleconference connection open until 10:10 A.M. to enable the Tenants to call into the teleconference hearing scheduled for 9:30 A.M.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that Landlord S.C., Advocate N.G. and I were the only ones who had called into the teleconference.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Advocate N.G. stated that the Landlord was not served with the Tenants' Proceeding Package. The Landlord filed a direct request with the RTB and learned about the Tenants' application. The Landlord then requested for a copy of the Proceeding Package from the RTB. I find that the Landlord was not served with Proceeding Package in accordance with the Act.

Advocate N.G. stated that the Landlord sent her Proceeding Package to the Tenants on September 5, 2024 via email. The Landlord provided copies of form #RTB-51 Address for Service signed by the parties.

Based on Advocate N.G.'s testimony and the evidence, I find that Tenants were served on September 5, 2024, by pre-agreed e-mail in accordance with section 43(2) of the Residential Tenancy Regulation and is deemed received on September 8, 2024, the third day after emailing.

Service of Evidence

Advocate N.G. stated that the Landlord was not served with any evidence. The Tenants did not provide any proof of service of evidence to the Residential Tenancy Branch. I find that the Tenants did not serve the Landlord with any evidence.

Advocate N.G. affirmed that the Landlord's evidence was included in the Proceeding Package. I find the Landlord's evidence was served on the Tenants in accordance with section 43(2) of the Residential Tenancy Regulation and deem its receipt on September 8, 2024.

Preliminary Matters

Claim Increase

At the outset of the hearing, the Landlord sought to increase her monetary claim from \$1,847.00 to \$3,694.00 to reflect the total amount of rent arrears.

Residential Tenancy Branch Rules of Procedure, Rule 7.12, 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 Tenants would have known about and resulted since the Landlord submitted the application.

Dismissal of Tenants' Application

Policy Guideline #12 states that failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position.

I find the Tenants have not served the landlord with the application for dispute resolution.

Accordingly, I dismiss the Tenants' Application in its entirety.

Issues to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent?

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 but will refer only to what I find relevant for my decision.

Advocate N.G. testified that the tenancy began on June 8, 2022, with a monthly rent of \$1,847.00, due on 1st day of each month, with a security deposit in the amount of \$875.00, currently being held by the Landlord.

Advocate N.G. affirmed that the Landlord served the Tenants the 10 Day Notice by attaching a copy to the Tenants' door on August 2, 2024.

A copy of the 10 Day Notice was put into evidence by the Landlord. In it, it indicates that the Tenants failed to pay \$1,847.00 in rent on August 1, 2024 and identifies August 11, 2024 as its effective date.

The Tenants disputed the 10 Day Notice on August 15, 2024.

Advocate N.G. stated that rent for August and September 2024 remains outstanding, and that the total amount owing is \$3,694.00.

Analysis

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

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).

Section 55(2)(b) of the Act permits a landlord to request an order of possession when a notice to end the tenancy has not been disputed by the tenant, and the time for making any such application has expired.

I find that the Landlord served the 10 Day Notice by attaching a copy to the Tenants' door on August 2, 2024 in accordance with s. 88(g) of the Act. I deem under s. 90(c) of the Act that the Tenants received it on August 5, 2024.

As per s. 46(2) of the Act, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the Act. I have reviewed the 10 Day Notice and find that it complies with the formal requirements of s. 52 of the Act. It is signed and dated by the Landlord, states the address for the rental unit, states the effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). I find that the 10 Day Notice complies with section 52 of the Act.

I note that the effective date on the 10 Day Notice is August 11, 2024. In accordance with section 53 of the Act, I correct the effective date to August 15, 2024, 10 days after it was deemed received by the Tenants on August 5, 2024.

As the correct effective date of the Notice has already passed, I find that the Landlord is entitled to an Order of Possession.

I grant the Landlord an order of possession effective within 7 days of receipt by the Tenants.

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

Section 26(1) of the Act requires tenants to pay rent when it is due under the tenancy agreement (oral or written) whether or not the landlord complies with the Act.

Based on Advocate N.G.'s testimony, I find the full amount of the rent arrears is currently \$3,694.00, as amended and in accordance with Rule 7.12.

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 in the amount of \$3,694.00.

The Landlord continues to hold the Tenants a security deposit in the amount of \$875.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain the Tenants' security deposit in partial satisfaction of the monetary order.

I further order the Landlord to retain the interest accrued on the security deposit, which is \$34.69 as of the date of this Decision.

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

As the Landlord was successful in this 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 an Order of Possession to the Landlord **effectives seven (7) days after service of this Order on the Tenants**. 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 **\$2,884.31** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$3,694.00
Security Deposit plus interest	-\$909.69
authorization to recover the filing fee for this application from the Tenants under section 72 of the Act	\$100.00
Total Amount	\$2,884.31

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 Tenant fails 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 17, 2024

Residential Tenancy Branch