

## **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) under sections 46 and 55 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

The Tenant said that he sent the Proceeding Package to the Landlord by mail to an address in Delta. The Tenant could not recall specific information with respect to when or how he sent the package. He did not assert having received the package returned to sender.

The Landlord's current address for service is in Vancouver. This address is written on the 10 Day Notice. The Landlord asserts that they did not receive the Proceeding Package by mail from the Tenant. The Landlord said that they learned of the application on September 11, 2024, and received a courtesy copy of the application from the Residential Tenancy Branch.

While the Tenant could not establish that he served the Proceeding Package to the Landlord as required to do, the Landlord said that they were prepared to proceed such that the matter could be resolved.

I find that the Proceeding Package which was not served in accordance with section 89 of the Act has been sufficiently served for the purposes of the Act under section 71(2)(c).

### **Service of Evidence**

The Tenant submitted no evidence in support of their application.

The Landlord submitted evidence to the Residential Tenancy Branch and said that they served that evidence to the Tenant in person on September 11, 2024. The Landlord said that an agent attended at the door of the rental unit, and that the package was directly received by a person who identified themselves as the Tenant A.B. That person refused to sign the Proof of Service document to acknowledge receipt.

A Proof of Service document was submitted by the Landlord in evidence which supports the above and is signed by the agent and a witness. The Tenant said that he did not receive that evidence package. He said that someone was staying at his residence for a couple of weeks while he was away and that they may have received the package. The Tenant suggested that the evidence package may be at his unit but that he was not there himself and could not confirm.

While the Tenant denies having received this package, I find that the Proceeding Package was served on September 11, 2024, in accordance with section 88 of the Act. As a matter of procedural fairness, I summarized the evidence provided by the Landlord such that the Tenant could respond. The evidence submitted by the Landlord was primarily tenancy documents that were in the possession of the Tenant and material to prove service of those documents, as well as a rent payment ledger for the unit.

## **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.

A copy of the tenancy agreement was submitted by the Landlord in their evidence, and both parties confirmed its accuracy. The agreement says that the tenancy began on January 5, 2024, that monthly rent is \$4,168.00 due on the first day of the month, and that a security deposit of \$2,084.00 has been paid.

The Landlord said that the Tenant failed to pay rent for March 1, 2024, or for any of the months that followed. The Landlord submitted in their evidence a rent payment that shows the arrears. The name of the Tenant and address of the unit match the present dispute. The ledger documents four attempted payments by credit card on March 29 and 31, 2024. Those payments were declined by the credit card company.

The Tenant said that they have paid their rent to date, that they pay their rent every month by certified cheque or bank draft, and that they send those cheques to an address in Delta. The Tenant could recall no specific information about the dates of the certified cheques or bank drafts, the dates they were sent to the address in Delta, or the specific address in Delta that he sent them to. The Tenant provided no bank records to support his assertions.

The Tenant denied that payments were attempted by credit card and was unfamiliar with the names of the two people who attempted those payments. The Tenant said that his mother has also paid an unspecified number of rent payments on his behalf.

The Landlord clarified that the tenancy agreement does provide an address in Delta but that their company took over management of the building on February 20, 2024. The Landlord submits that notices of the change in management and updated payment

instructions were posted to the doors of each unit, as well as in the common areas of the building and in the elevators.

The Landlord said any cheques received by the Delta office were forwarded to the Vancouver office for the two months following the change in management and that no cheques were received from the Tenant. The Landlord said that the Vancouver office remains in contact with the Delta office, were any further payments to have been received there.

The Tenant asserted no knowledge of the change in management and said that they did not receive the notice referred to by the Landlord. The Tenant admitted to having seen the notice in the elevator. He also said he was unable to make payments online.

The Landlord issued the 10 Day Notice dated August 27, 2024, and posted it to the door of the Tenant same day. The Landlord submitted a Proof of Service document which confirms the above and is signed by the agent and witness. The Tenant said that he received the 10 Day Notice on August 29, 2024, and could not recall if he had been away from his unit in the days prior to that.

The 10 Day Notice says that the Tenant failed to pay rent in the amount of \$29,176.00 as of August 1, 2024.

## **Issues to be Decided**

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

## **Analysis**

### **Should the Landlord's 10 Day Notice be cancelled?**

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).

I find that the 10 Day Notice was received by the Tenant on August 29, 2024, and that the Tenant applied to dispute the notice within the five-day period.

I note that the amount stated on the 10 Day Notice that the Tenant failed to pay as of August 1, 2024, includes the future amount owing for September 1, 2024. The Landlord admitted this was an error and said that on the date the 10 Day Notice was issued their accounting would have already applied the future rent for September 1, 2024. I am satisfied that the Tenant understood the intention of the 10 Day Notice, such that he

applied to dispute it. The Tenant made no attempt to pay the arrears following receipt of the 10 Day Notice, such that the amount on the notice may have mislead him. I find it reasonable to amend the notice pursuant to section 68(1) of the Act. The corrected amount in arrears as of August 1, 2024, is \$25,008.00.

The Tenant was unspecific in his assertions that rent was paid and provided no documentary evidence to confirm it. I prefer the evidence of the Landlord, which included the rental payment ledger, and find that the Tenant has failed to pay rent for seven months.

The Tenant's application for cancellation of the Landlord's 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.

Section 52 of the Act says that in order to be effective, a notice to end tenancy must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, and be in the approved form (#RTB-30). I have reviewed the 10 Day Notice dated August 27, 2024, and find that it complies with the requirements of this section.

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

The Landlord seeks possession of the rental unit as soon as possible. Residential Tenancy Policy Guideline 54 provides guidance on determining the effective date of an Order of Possession. It suggests an arbitrator consider, among other things, the point up to which the rent has been paid and the length of the tenancy.

The Tenant has paid no rent since February 6, 2024. This is also a relatively new tenancy, such that the Tenant may be more readily able to vacate the unit. The Tenant suggested he needed additional time to vacate the unit because of ongoing medical appointments, however provided no evidence of this and had already disclosed that he is frequently absent from his rental unit to stay with his mother for weeks at a time. It is not apparent that the medical appointments would prevent him from vacating the unit in that circumstance.

I order possession of the rental unit effective September 30, 2024, at 1:00 pm, after service of this order on the Tenant.

### **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. As stated above, I find that the Notice complies with section 52 of the Act.

I accept the evidence of the Landlord that at the time the 10 Day Notice was issued, the Tenant was in arrears of \$25,008.00, and that he has failed to pay an addition \$4,168.00, due September 1, 2024.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent for the months of March through September 2024, in the amount of \$29,176.00.

Section 72(2) of the Act says that if an arbitrator orders a tenant to pay any amount to the landlord, the amount may be deducted from any security deposit due to the tenant. As the Landlord holds a security deposit in the amount of \$2,084.00 plus \$39.51 interest (calculated from January 5, 2024, to September 17, 2024), I offset the Monetary Order by that amount.

## Conclusion

I grant an Order of Possession to the Landlord **effective by 1:00 PM on September 30, 2024, 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 **\$27,052.49** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$29,176.00
less security deposit plus interest	-\$2,123.51
<b>Total Amount</b>	<b>\$27,052.49</b>

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 Tenant fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

The Tenant's application for cancellation of the Landlord's 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 23, 2024

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Residential Tenancy Branch