

## **DECISION**

### **Introduction**

This hearing 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) under sections 46 and 55 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act

This hearing also dealt with Landlords' Application for Dispute Resolution under the Act 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 Tenant under section 72 of the Act

No one attended for the Tenants.

Landlords' agent G.S. attended for the Landlords.

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

G.S. testified that the Landlords did not receive the Proceeding Package from the Tenants but received a courtesy copy from the Residential Tenancy Branch upon calling. G.S. stated that the Landlords had sufficient time to review the Proceeding Package and wished to proceed with the hearing.

G.S. also testified that the Landlords served the Tenants with their Proceeding Package by registered mailing it to each of them on August 23, 2024 to the address of the rental unit. The Landlords submitted Canada Post Mailing Receipts as proof of this service.

## **Service of Evidence**

G.S. testified that the Landlords did not receive any evidence from the Tenants.

G.S. further testified that the Landlords served the Tenants with their evidence by registered mailing it to each of them on August 26, 2024 to the address of the rental unit. The Landlords submitted Canada Post Mailing Receipts as proof of this service.

## **Preliminary Matters**

At the outset of the hearing, G.S. informed me of the Landlords' names for the purpose of this application. I therefore amended this application to correct one landlord's name and to add the other as a respondent for the Tenants' application.

## **Issues to be Decided**

Should the 10 Day Notice be cancelled?

Are the Landlords entitled to an Order of Possession based on the 10 Day Notice?

Are the Landlords entitled to a Monetary Order for unpaid rent?

Are the Tenants entitled to an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the Tenants entitled to an Order for the Landlords to make repairs to the rental unit?

Are the Tenants entitled to an Order for the Landlords to provide services or facilities required by law?

Are the Landlords 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.

G.S. testified that this tenancy began on July 15, 2024, with a monthly rent of \$2,600.00, due on first day of the month, with a security deposit in the amount of \$1,300.00 and a pet damage deposit in the amount of \$300.00.

G.S. also testified that the Landlords served the Tenants with the 10 Day Notice by registered mailing it to each of them on August 8, 2024, to the address of the rental unit. The Landlords submitted the Canada Post Mailing Receipts as proof of this service.

G.S. stated that the 10 Day Notice was 3 pages and indicated that \$2,600.00 was due on August 1, 2024. The Landlords submitted a copy of the 10 Day Notice, which confirmed these details.

G.S. stated that no rent had been paid by the Tenants for August as well as September.

The Landlords submitted text messages dated August 2, 4, 6 and 7, 2024, asking the Tenants for the rent.

The Landlords further submitted emails as proof of e-transfers received from the Tenants. The first email showed an e-transfer of \$1,600.00 received on July 2, 2024 and the second email showed an e-transfer of \$1,300.00 received on July 12. G.S. stated that the first e-transfer was for the security and pet damage deposit while the second was for the rent for July. G.S. stated that no further rent has been sent by the Tenants.

## **Analysis**

### **Should the 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(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).

Based on the Landlord's testimony, I deem the 10 Day Notice served on the Tenants on August 13, 2024, and find that the Tenants had until August 18, 2024 to dispute the 10 Day Notice or to pay the full amount of the arrears.

The RTB's records show that the Tenants applied for dispute resolution on time, on August 17, 2024.

Based on the G.S.'s testimony, I find that the parties agreed to a monthly rent of \$2,600.00, payable on the first of the month, and no rent has been paid for August or September 2024. I further find that the Tenants failed to pay any rent within five days of receiving the 10 Day Notice.

For the above reasons, the Tenant's application for cancellation of the 10 Day Notice under sections 46 and 55 of the Act is dismissed, without leave to reapply.

### **Are the Landlords 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, as it is signed by the Landlord, gives the address of the rental unit, states the effective date, states the ground for ending tenancy, and is in the approved form.

Section 68(2)(a) of the Act states: the director may, in accordance with this Act, order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy.

As the Tenants are currently occupying the rental unit, I find the tenancy ends on the date of this decision, per section 68(2)(a) of the Act.

As the Tenants continue to occupy the rental unit, did not pay the rental arrears and I have dismissed their application for cancellation of the 10 Day Notice, I award the Landlord an order of possession, per section 55(2)(b) of the Act.

As rent has not been paid and the effective date of the 10 Day Notice is August 23, 2024, I order the order of possession to be effective fourteen days after service.

### **Are the Landlords 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.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$5,200.00, for the months of August and September 2024.

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security and pet damage deposits of \$1,600.00, in partial satisfaction of the monetary award.

### **Are the Tenants entitled to an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided?**

Section 27 of the Act states that a landlord may terminate or restrict a service or facility, that is not a material term or is essential to the tenants' use of the rental unit as living

accommodation, if they give 30 days' notice in the approved form and reduce the rent in an amount that is the same as the reduction in value of the tenancy.

Section 65 of the Act allows an arbitrator to make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement for repairs, services or facilities agreed upon but not provided.

As the Tenants did not attend the hearing, the Tenants' application for an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period

### **Are the Tenants entitled to an Order for the Landlords to make repairs to the rental unit?**

Section 32 of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Tenants bear the burden to prove that they have repairs to be completed which the Landlords have not completed in a reasonable time frame after being notified in writing from the Tenants.

As the tenancy ends on the date of this decision, the Tenants' application for an order for the Landlord to make repairs to the rental unit under sections 32 and 62 moot and is dismissed, without leave to reapply. I make no findings on the merits of the matter.

### **Are the Tenants entitled to an Order for the Landlords to provide services or facilities required by law?**

Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

The Tenants bear the burden to prove that the Landlords have terminated or restricted a service or facility that is essential to the tenants' use of the rental unit as living accommodation or is a material term of the tenancy agreement.

As the tenancy ends on the date of this decision, the Tenants' application for an order for the Landlords to provide services or facilities required by law is moot and is dismissed, without leave to reapply. I make no findings on the merits of the matter.

**Are the Landlords entitled to recover the filing fee for this application from the Tenant?**

As the Landlords were successful in this application, the Landlords' application for authorization to recover the filing fee for this application from the Tenants under section 72 of the Act is granted.

**Conclusion**

I grant an Order of Possession to the Landlord **effective fourteen (14) 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 grant the Landlord a Monetary Order in the amount of **\$3,700.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$5,200.00
authorization to retain the security deposit and pet damage deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act	- \$1,600.00
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>\$3,700.00</b>

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.

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 26, 2024

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Residential Tenancy Branch