

## **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

and with the Tenant's Application for Dispute Resolution under 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
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

J.H. attended the hearing for the Landlord.

No one attended the hearing for the Tenant.

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

The Landlord sent the Proceeding Package to Tenant K.W. by Registered Mail on August 27, 2024. The Landlord said that the package was not claimed at the post office and was returned to sender. K.W. was not present at the hearing to attest to why she failed to claim the package from the post office, however because she filed her own application for dispute resolution and was given her own notice of the hearing directly from the Residential Tenancy Branch with details of the present hearing, I am satisfied that she was aware of the proceedings. In view of that, I find that Tenant K.W. was served with the Proceeding Package on September 3, 2024, the fifth day after

registered mailing (adjusted for the weekend and statutory holiday) in accordance with sections 89(1) and 90 of the Act.

The Landlord sent the Proceeding Package to Tenant D.W. by Registered Mail on August 27, 2024. The Landlord submits that D.W. does not reside at the rental unit and was a co-signer for K.W. The Landlord said that the package was sent to the address for D.W. listed on the tenancy application. The Landlord provided a Canada Post tracking number. The Landlord said that this proceeding package has not been returned to sender. D.W. was not present at the hearing to confirm receipt of the package, however because D.W. is named as an applicant with K.W., I am satisfied that he was aware of the proceedings. In absence of evidence to the contrary, I find that D.W. was served with the proceeding package on September 3, 2024, the fifth day after registered mailing (adjusted for the weekend and statutory holiday) in accordance with sections 89(1) and 90 of the Act.

The Tenants were required to serve the Proceeding Package for their own application to the Landlord. The Landlord submits that she has not received notice from the Tenants. The Landlord did receive a copy of the Tenant's application directly with the previous Interim Decision dated August 23, 2024. As the Landlord was aware of the contents of the Tenants' application and prepared to proceed, I find that the Proceeding Package which was not served by the Tenants in accordance with section 89(1) of the Act has been sufficiently served for the purposes of the Act under section 71(2)(c), such that the hearing may proceed.

## **Service of Evidence**

The Landlord sent the evidence for the hearing with the original direct request application to Tenant K.W. by Registered Mail on August 20, 2024. The Landlord submitted a Proof of Service document and Canada Post tracking number. I find that K.W. was served with evidence on August 26, 2024, the fifth day after registered mailing (adjusted for the weekend) in accordance with sections 88 and 90 of the Act.

The Landlord sent the evidence for the hearing with the original direct request application to Tenant D.W. by Registered Mail on August 20, 2024. The Landlord submitted a Proof of Service document and Canada Post tracking number. I find that D.W. was served with evidence on August 26, 2024, the fifth day after registered mailing (adjusted for the weekend) in accordance with sections 88 and 90 of the Act.

The Tenant did not submit evidence for consideration.

## **Preliminary Matters**

### **Consequences of not attending the hearing**

The Tenant did not attend the hearing. Rule 7.3 of the Residential Tenancy Branch Rules of Procedure permits that an arbitrator may conduct a dispute resolution hearing

in the absence of a party if a party of their agent fails to attend the hearing. I conducted this hearing in the absence of the Tenant.

Where a party does not attend the hearing to present evidence, Rule 7.4 permits that an arbitrator may consider evidence submitted. I have considered the content of the Tenant's application in their absence.

### **Increased rent claim**

At the outset of the hearing the Landlord sought to increase their monetary claim from \$2,749.00 to \$4,749.00 to reflect the Tenant's failure to pay \$2,000.00 in monthly rent for September 2024, the additional month of unpaid rent waiting for this hearing.

Rule 7.12 says 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.

### **Issues to be Decided**

Should the Landlord's 10 Day Notice be cancelled?

Is the Tenant entitled to more time to cancel the Landlord's 10 Day Notice?

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

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

Is the Tenant entitled to an order for the Landlord to make repairs to the unit?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

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

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

### **Background and Evidence**

I have reviewed all evidence, including the testimony of the party present, but will refer only to what I find relevant for my decision.

This tenancy began on February 15, 2024, with a monthly rent of \$2,000.00, due on the first day of the month, a security deposit in the amount of \$1,000.00, and a pet damage deposit in the amount of \$500.00. This information is found on the tenancy agreement

submitted by the Landlord in their evidence and was confirmed verbally at the hearing by J.H.

The Landlord submitted in evidence a ledger of rent payments made by the Tenant. It records three payments for the month of July 2024: \$1.00 on July 13, 2024, \$500.00 on July 13, 2024, and \$750.00 on July 17, 2024. The ledger reflects \$749.00 in arrears for July 2024, and that no rent has been paid for August 2024.

The Landlord issued the 10 Day Notice dated August 6, 2024, and sent it to the Tenant by Registered Mail. The 10 Day Notice says that the Tenant failed to pay \$2,749.00 as of August 1, 2024. The Landlord provided proof of service for the 10 Day Notice which confirms that it was signed for by the Tenant on August 16, 2024. This date is consistent with the information provided in the Tenant's application.

The Tenant filed to dispute the 10 Day Notice on August 22, 2024.

The Landlord asserts that the Tenant has further failed to pay rent in the amount of \$2,000.00 for September 2024. The Landlord confirms that the Tenant continues to reside in the rental unit though they have had no contact.

## **Analysis**

### **Should the Landlord's 10 Day Notice be cancelled and is the Tenant entitled to more time to cancel the Landlord's 10 Day Notice?**

Section 46 of the Act says that a Landlord may end a tenancy if rent is unpaid on any day after the day that it is due, by giving notice to end tenancy effective on a date that is not earlier than 10 days after the Tenant receives the notice. Upon receipt of the 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 within the time required, they are conclusively presumed to have accepted the end of the tenancy under section 46(5) of the Act.

I find that the 10 Day Notice was received by the Tenant on August 16, 2024, and that the Tenant had until August 21, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears. I note that the effective date written on the 10 Day Notice is August 6, 2024, the same date that the 10 Day Notice was dated and issued. Section 53(2) of the Act says that if the effective date stated in the notice is earlier than the earliest date permitted under the Act then it is deemed to correct to the earliest date that does comply. In this instance, the earliest date is August 26, 2024, 10 days after the notice was confirmed received.

The Tenant applied to cancel the 10 Day Notice on August 22, 2024, outside the five-day period and is conclusively presumed to have accepted that the tenancy would end on August 26, 2024, the corrected effective date of the 10 Day Notice. The Tenant

applied for dispute resolution requesting more time to cancel the notice. Section 66 of the Act says that an arbitrator may extend a time limit established by the Act only in exceptional circumstances.

I have relied on the written application of the Tenant in their absence to establish whether it would be appropriate in these circumstances to extend the time limit to dispute the 10 Day Notice. Their application asserts no basis for their request for an extension. Further, were I to extend the timeline, no evidence was provided by the Tenant of what reason the notice should be cancelled. It is admitted by the Tenant in their materials that they have failed to pay rent.

For the above reasons, the Tenants application for cancellation of the Landlord's 10 Day Notice and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 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 6, 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 made an incomplete rent payment for the month of July 2024, and no payment for the months of August and September 2024. This is also a relatively new tenancy, such that the Tenant may be more readily able to vacate the unit. I note that in their application the Tenant referred to themselves as a single parent. In the absence of further submissions from the Tenant, I order possession of the rental unit effective fourteen days after service of this order to the Tenant, at 1:00 pm on that day.

### **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 \$2,749.00, and that she has failed to pay an additional \$2,000.00, 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 \$4,749.00.

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 \$1,500.00 plus \$24.68 interest (calculated from February 15, 2024, to September 24, 2024), I offset the Monetary Order by that amount.

**Is the Tenant entitled to an order for the landlord to make repairs to the unit?**

This portion of the Tenant's application did not assert any outstanding repairs required for their rental unit. Rule 2.2 of the Rules of the Procedure says that the claim is limited to what is stated in the application. Further, as said above, the tenancy is imminently ending. Therefore, the Tenant's application for an order for the Landlord to make repairs to the unit is dismissed without leave to reapply.

**Is the Tenant entitled an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?**

Section 62 of the Act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

The Tenant's application suggests that this remedy is sought because the Landlord served the 10 Day Notice by Registered Mail and they considered this to be in some way improper. Section 88 of the Act expressly permits service of documents by Registered Mail.

I find that the Tenants have not demonstrated how the Landlord has failed to comply with the Act in doing so or that an order to comply is required.

For the above reasons, the Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed, without leave to reapply.

**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 recover the filing fee for this application from the Landlord?**

As the Tenant was unsuccessful in this application, 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**

The Tenant's application is dismissed in its entirety, without leave to reapply.

I grant an Order of Possession to the Landlord **effective fourteen (14) days after service of this Order on the Tenant, at 1:00 PM**. 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 **\$3,324.32** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$4,749.00
less security deposit plus interest	-\$1,524.68
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>\$3,324.32</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 Small Claims 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