

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 One Month Notice to End Tenancy for Cause (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing also dealt with the Landlord's Application for Dispute Resolution under 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
- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord testified they did not receive the Tenant's Proceeding Package.

An applicant is obligated to prove service of the Proceeding Package to the satisfaction of an arbitrator, under Rule 3.5 of the *Residential Tenancy Branch's Rules of Procedure*. Rule 3.5 also allows an arbitrator to either adjourn a dispute or dismiss it with or without leave to reapply if they are not satisfied the respondent has been served.

I am not satisfied the Tenant served the Landlord, so I dismiss their application in its entirety without leave to reapply. I chose not to grant leave to reapply, as I later find their claims moot, as can be seen later in this application.

The Landlord testified they served the Tenant their proceeding package by placing it on the rental unit's door on August 14, 2024. I find this did happen based on the witnessed proof of service the Landlord submitted.

I note that attaching a document to a door is not a valid method of service for a Proceeding Package under section 89 of the Act.

However, I also find that the Landlord served the Tenant their amendment request in person on August 27, 2024. In person service is an approved method of service under section 89. I base this finding on the witnessed proof of service the Landlord submitted.

Section 71 (2)(c) of the Act allows the arbitrators to find a document was sufficiently served.

I find that the Proceeding Package was sufficiently served using section 71 (2)(c). One of the reasons I used my discretion is that the Landlord served the Tenant other documents related to the dispute using a method valid under section 89. The other reason is that no evidence suggests the Tenant had not received the documents attached to their door.

Service of Evidence

The Landlord testified they did not receive the Tenant's evidence, and the Tenant provided no evidence showing they served it. Based on this I find the Tenant's evidence was served and I will therefore not consider it per Rule 3.17.

The Landlord testified they served the Tenant their first batch of evidence with their proceeding package by placing it on the rental unit's door on August 14, 2024. They testified serving the Tenant their second batch of evidence with their request for amendment on August 27.

Based on the same evidence I found the proceeding package and request for amendment were served, I also find the Landlord's evidence was served.

Preliminary Matters

Amendment for Unpaid Rent before Hearing

The Landlord submitted an amendment to their application to include a claim for unpaid rent on August 27, 2024. This request also included a request for a \$25.00 fee for late payment of rent. I previously found the Landlord served a copy of their amendment request to the Tenant on the same day they submitted it.

Rule 4.1 allows an applicant to amend a dispute by submitting an amendment form to the Residential Tenancy Branch (the Branch). Rule 4.6 requires the applicant to serve the respondent a copy of the amendment at least fourteen days before the hearing.

August 27, 2024, is more than fourteen days before the hearing and I find the amendment is directly related to the 10 Day Notice. Therefore, I grant their request to amend their claim.

Amendment for Additional Unpaid Rent and Late Payment Fee at the Hearing

The Landlord requested that an additional \$2,794.50 of unpaid rent for September 2024 be added to their claim for unpaid rent at the hearing. This would bring their total claim to \$5,614.00.

Rule 7.12, of the Residential Tenancy Branch's Rules of Procedure, allows me to grant amendments at a hearing. Specifically, I can grant an amendment under the Rule it arises from circumstances that a party can reasonably anticipate the amendment. Rule 7.12 cites as an example the increase in arrears in rent accrued between filing the application and conducting the hearing.

Pursuant to Rule 7.12 I amend the Landlord's application to seek the increased arrears as the Tenant could have reasonably anticipated this.

Amendment for Additional Compensation for Damaged Countertop

The Landlord also requested an amendment to include damage the Tenant did to a countertop at the hearing.

In this case I do not find the Tenant could reasonably anticipate the Landlord bringing this claim at the hearing. This claim is unrelated to the other claims, and they may not have realised the damage occurred during the tenancy.

Therefore, I will not amend the Landlord's application to include this claim.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on the One Month 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 Landlord entitled to recover the filing fee for this application from the Tenant?

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 confirmed the following information from the Tenant's application:

- The tenancy began on November 1, 2021.
- The rent currently is \$2,794.50 due on the first day of the month.
- The Landlord currently holds a \$1,200.00 security deposit.
- The Landlord attached the One Month Notice to the Tenant's door on July 8, 2024.

The Landlord submitted a copy of the One Month Notice which has an effective move out date of August 31, 2024.

The Landlord submitted a copy of the tenancy agreement. The tenancy agreement includes a term stating the Tenant would pay a \$25.00 administrative fee if they did not pay their rent on time.

The Landlord testified the Tenant has not paid rent for August or September 2024.

The Landlord testified that the Tenant moved out without telling them by September 2, 2024. The Landlord is currently in full possession of the rental unit.

Analysis

Is the Landlord entitled to an Order of Possession based on the One Month Notice?

Based on the Landlord's testimony, I find the Landlord has since taken back possession of the rental unit.

As the Landlord has now taken back possession of the rental unit, I find all issues involving an Order of Possession are now moot.

Therefore, the Landlord's following claims are dismissed without leave to reapply:

- 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
- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 and 55 of the Act

Is the Landlord entitled to a Monetary Order? If so for how much?

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 Landlord's testimony I find that the Tenant did not pay rent for August or September 2024.

August

I also find based on the tenancy agreement that the Tenant agreed to pay a \$25.00 late fee if they failed to pay rent on time. Such a late fee is allowed under section 7(1)(d) of the *Residential Tenancy Regulation*.

Therefore, I find the Tenant owes \$2,819.50 for unpaid rent and the fee for August 2024.

September

The Landlord testified that the Tenants left the rental unit by September 2, 2024.

The Landlord argued the Tenant's lack of communication prevented them from arranging for a new tenant for September 2024, and therefore they lost rent for that whole month.

I find the tenancy ended on August 31, 2024, at 1:00pm due to the effective date of the One Month Notice. I also find in this case based on the Landlord's testimony that the Tenant did not move out until September 2.

Under section 57 of the Act, a landlord may claim compensation from a previous tenant for any time they occupied the rental unit after the tenancy has ended. Tenants who stay in a rental unit after the tenancy ends are called overholding tenants. However, this section should not be read as placing the same duty to pay rent in full at the start of the month on overholding tenants. This section is carefully written to differentiate overholding tenants from tenants and does not refer to the compensation as rent.

Therefore, the Tenant did not automatically owe the full months rent at the start of the month, nor would a late rent fee apply to them. Rather the Tenant would owe the Landlord for any losses that not following the Act caused them under section 7.

A party seeking compensation under section 7 must prove:

1. the other party did not follow the Act,
2. that they suffered a loss because of this, and

3. they could not reasonably reduce this loss.

I find the Landlord suffered a loss due to the Tenant's overholding. This loss comes from the Landlord not having access to the rental unit for two days and I see no way Landlord could have reduced this loss. I find this loss is equal to two days of rent.

However, the Landlord has not shown they made efforts to find a new tenant. To prove they were owed the full months rent the Landlord needs to prove their loss could not be reduced by taking reasonable actions. Given this I do not find they have shown they are owed rent for the whole month. Furthermore, I note at the time of the hearing the month in question had not ended.

Therefore, I find the Landlord's are owed an additional \$186.30 for these two days.

Security Deposit

As the tenancy is ending, I also order the Landlord to retain the Tenant's damage deposit as partial repayment of this award. I find there was a \$1,200.00 security deposit, and that the tenancy began on November 1, 2021, as these facts are not in dispute. An additional \$48.11 for the interest would have accrued according to the formula in section 4 of the Residential Tenancy Regulation.

2021 \$1200.00: \$0.00 interest owing (0% rate for 16.71% of year)

2022 \$1200.00: \$0.00 interest owing (0% rate for 100.00% of year)

2023 \$1200.00: \$23.46 interest owing (1.95% rate for 100.00% of year)

2024 \$1219.49: \$24.65 interest owing (2.7% rate for 74.87% of year)

Therefore, I grant the Landlord a monetary order for \$1,757.69 based on the calculation shown in the conclusion.

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.

Conclusion

I dismiss the Tenant's application in its entirety without leave to reapply.

I dismiss the Landlord's following claims without leave to reapply:

- 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
- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 and 55 of the Act

I grant the Landlord a Monetary Order in the amount of **\$1,857.69** under the following terms:

Monetary Issue		Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act		\$2794.50
Late rent fee		\$25.00
a Monetary Order for overholding under section 57	Monthly rent	\$2,794.50
	Days in September	÷30
	Days of overholding	2
	Total	\$186.30
authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act		-\$1,200.00
deposit interest		-\$48.11
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act		\$100.00
Total Amount		\$1,857.69

If the Landlord wishes to enforce **this Order**, they must properly serve it on the Tenant in accordance with section 88 of the Act. 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: October 1, 2024

Residential Tenancy Branch