

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) under section 47 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) 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

and 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
- 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 confirmed having received the Proceeding Package from the Tenant by Registered Mail on August 14, 2024. I find that the Landlord was served with the Proceeding Package in accordance with section 89 of the Act.

The Tenant confirmed having received the Proceeding Package from the Landlord by pre-agreed email on September 13, 2024. I find that the Tenant was served with the Proceeding Package in accordance with section 89 of the Act.

Service of Evidence

The Tenant submitted evidence to the Residential Tenancy Branch in support of their application. The Tenant initially asserted that they served this evidence to the Landlord with the Proceeding Package by Registered Mail. The Landlord denied having received evidence from the Tenant with the Proceeding Package. The Tenant was unclear as to

what evidence was included with the Proceeding Package. They admitted that videos were not served. I note that much of the evidence was submitted to the Residential Tenancy Branch after the date that the Tenant asserts that they sent the evidence by Registered Mail. It was not apparent that the evidence submitted was relevant or necessary and as a matter of procedural fairness I excluded it from consideration.

The Landlord submitted evidence to the Residential Tenancy Branch in support of their application as well as in response to the Tenant's application. The Landlord initially asserted that they served all evidence to the Tenant with the Proceeding Package by email. The Tenant denied having received evidence from the Landlord with the Proceeding Package. The Landlord submitted a screenshot of the email sent to the Tenant dated September 13, 2024, which documents that only two additional documents were included with the Proceeding Package. The Tenant confirmed having received those. The Landlord referred to other emails after this date which enclosed utilities bills. The Tenant confirmed having received those. It was not apparent that the evidence submitted was relevant or necessary and as a matter of procedural fairness I excluded it from consideration.

Preliminary Matters

Partial Settlement

Under section 63 of the Act, an arbitrator may assist the parties to settle any part of their dispute, and the settlement may be recorded in the form of a decision or an order.

Two matters were resolved with the agreement of the parties. One, that the Landlord sought only to rely on and enforce the 10 Day Notice, such that it was unnecessary to consider cancellation of the One Month Notice. And two, that the parties agreed to specific conditions on the Landlord's right to enter the rental unit.

1. The parties agree that the One Month Notice dated August 2, 2024, is cancelled and of no force and effect.
2. The parties agree that the Landlord may enter the rental unit to conduct an inspection on Tuesday, October 8, 2024, at 12:00 pm. The Landlord may take photos of the unit as necessary.

As these matters were settled between the parties, I make no factual findings about the merits of those applications.

Further, the Tenants indicated that they no longer sought authorization to change the locks to the rental unit. Therefore, the Tenant's application for authorization to change the locks to the rental unit under section 70(2) of the Act is dismissed without leave to reapply.

Increase Rent Claim

At the outset of the hearing the Landlord sought to increase their monetary claim from \$3,000.00 to \$6,000.00 to reflect the Tenant's failure to pay \$3,000.00 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

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 requiring the Landlord to comply with the Act, regulation or tenancy agreement?

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

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

Background and Evidence

I have reviewed the contents of both applications and the testimony of the parties, but will refer only to what I find relevant for my decision.

The parties agree that the tenancy began on November 1, 2023, that monthly rent in the amount of \$3,000.00 is due on the first day of the month, and that a security deposit in the amount of \$1,500.00 is held by the Landlord.

The Landlord issued the 10 Day Notice dated August 12, 2024. The Landlord posted the note to the door of the rental unit and the Tenants confirm receipt of the notice same day. The 10 Day Notice says that the Tenants failed to pay rent in the amount of \$3,000.00 due August 1, 2024, and utilities in the amount of \$1,227.03 following a written demand on July 31, 2024.

The Tenants admitted that they failed to pay rent for August 2024, and that they have further not paid rent for September 2024. They did not dispute the 10 Day Notice.

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).

The Tenant confirms having received the 10 Day Notice dated August 12, 2024, on their door same day. Therefore, the Tenant had until August 17, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The Tenant admits to having failed to pay rent on August 1, 2024, or within five days of receipt of the 10 Day Notice. The Tenant admits that they failed to pay rent for August 2024 at any time, and that they have further failed to pay rent for September 2024.

The Tenant did not dispute the 10 Day Notice because their wife gave birth the day following receipt of the notice. They did not seek an extension to the time limit, nor am I permitted by the Act to extend a time limit beyond the effective date of the notice.

As the Tenant failed to pay the arrears or dispute the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the end of this tenancy on August 24, 2024, the effective date on the 10 Day Notice. In this case, the Tenant and anyone on the premises were required to vacate the premises by August 24, 2024.

Therefore, I find that the Landlord is entitled to an Order of Possession based on a 10 Day Notice under sections 46 and 55 of the Act.

The Landlord seeks possession of the rental unit in ten days. 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, barriers to immediately vacating the rental unit and whether the tenant has children.

Two couples presently live in the rental unit, both of which have infant children born in August 2024. I am told that one of the women who has given birth is recovering from surgery and that they require two months to vacate the unit. I am satisfied that this is reasonable and necessary in the circumstances and order possession of the rental unit effective at 1:00 pm on November 30, 2024, after service of this order to the Tenant.

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

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 evidence before me, I find that the Landlord has established a claim for unpaid rent owing for August and September 2024 in the amount of \$6000.00.

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 under section 67 of the Act, in the amount of \$6,000.00.

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 \$35.32 interest (calculated from November 1, 2023, to October 1, 2024), I offset the Monetary Order by that amount.

The Landlord asserts additional arrears for utilities. At the time the 10 Day Notice was issued however, written demand had not been made more than 30 days prior. Further, at the time of this hearing on October 1, 2024, the Tenant had not yet paid \$3000.00 in monthly rent due this day. I am unable to consider that amount in this order as the Tenant has until end of day to pay rent. Should the Tenant failed to pay rent for October or November 2024, the Landlord may recover that and the alleged amount outstanding for utilities by way of separate application to the Residential Tenancy Branch.

Is the Tenant entitled to 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.

This portion of the Tenant's application asserts that the two notices to end tenancy issued by the Landlord amount to an effort to illegally evict them. I have upheld the 10 Day Notice dated August 12, 2024, as I have found it complies with the Act. I have not considered the One Month Notice as the Landlord did not seek to enforce it.

I find that the Tenants have not demonstrated how the Landlord has failed to comply with the Act 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 Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was not successful in their 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.

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

The One Month Notice dated August 2, 2024, is cancelled and of no force and effect.

The Landlord may enter the rental unit to conduct an inspection on Tuesday, October 8, 2024, at 12:00 pm.

The Tenant's application for authorization to change the locks to the rental unit under section 70(2) of the Act is dismissed without leave to reapply.

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.

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.

I grant an Order of Possession to the Landlord **effective at 1:00 PM on November 30, 2024, 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 **\$4,564.68** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$6,000.00
less security deposit plus interest	-\$1,535.32
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$4,564.68

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).

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 2, 2024

Residential Tenancy Branch