

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) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 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 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant confirmed he received the Proceeding Package from the Landlord. He further added that when he was given the Proceeding Package, the Landlord told him that he did not need to do anything further. As a result, he did not serve the Proceeding Package for his application on the Landlord.

I find the Tenant was served in accordance with section 89 of the Act.

Service of Evidence

The Tenant testified that when he was given the Proceeding Package by the Landlord, the Landlord told him that he did not need to do anything further. As a result, he did not serve his evidence on the Landlord.

The Tenant confirmed that he received the Landlord's evidence and had sufficient time to review it.

I find the Tenant was served in accordance with section 88 of the Act.

Preliminary Matters

Tenant's Application

Since the Tenant did not serve the Landlord with the Proceeding Package and his evidence, the Tenant's application is dismissed, with leave to reapply. As a result, only the Landlord's application is addressed in this decision.

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 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 Tenant and the Landlord agreed that this tenancy began on May 10, 2024, with a monthly rent of \$1,925.00 due on the first of the month, and a security deposit in the amount of \$962.50.

The parties also agreed that the Landlord served the 10 Day Notice on the Tenant on August 15, 2024, by attaching it to the Tenant's door. They further agreed that the 10 Day Notice indicated that \$3,856.37 was due on August 1, 2024. The Landlord submitted a copy of the 10 Day Notice which confirmed these details.

The Landlord testified that the Tenant only ever paid the security deposit and rent for May. The Landlord stated that while rent for June was waived due to a deal the Landlord was offering, the rent for July, August and September is outstanding. The Landlord stated that the Tenant has also been late with paying his BC Hydro bills, such that BC Hydro has informed the Landlord that they will disconnect services if not paid.

The Landlord submitted a ledger in evidence, which showed that a \$962.50 security deposit and a \$962.50 pet damage deposit had been paid by the Tenant on May 7, 2024, while rent for the 22 days the Tenant rented in May was paid on May 10, 2024, in the amount of 1,347.50. The ledger also showed the Tenant was credited one month's free rent and was returned the pet damage deposit on May 10, 2024. According to the ledger, no further rent was paid by the Tenant in July or August 2024.

The Landlord stated that the Tenant was sent a copy of the ledger in July, August and September.

The Landlord stated that as demonstrated by the ledger, the Tenant was also charged a late fee for not paying rent on time in August. The Landlord provided a copy of the tenancy agreement to show that late fees were agreed upon by the parties.

The Tenant testified that he has paid rent every month via e-transfer and believes there is an issue with Landlord's system for why his payments are not being captured. He stated that a similar issue happened for the rent for May when the Landlord could not initially find his payment but later found it. He further added that he sent e-transfer receipts to the Landlord to show that he has made the rent payments.

The Tenant further stated that while he received the ledger as part of the dispute resolution process, he was not sure if he had received it previously as the Landlord suggested.

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(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).

I find the 10 Day Notice deemed served to the Tenant on August 18, 2024 and that the Tenant had until August 23 to dispute the 10 Day Notice or to pay the full amount of the arrears.

Given the undisputed testimony of the Tenant and the Landlord, I find that the parties agreed to a monthly rent of 1,925.00, due on the first day of the month.

Based on the testimony of the Landlord and the ledger submitted, I find the Tenant failed to pay rent for July and August 2024. I found the Landlord's testimony compelling and find that rent for September 2024 is also outstanding. I further find that the Tenant failed to pay any rent within five days of receiving the 10 Day Notice.

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 Tenant is 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 Tenant continues to occupy the rental unit and did not pay the rental arrears, I award the Landlord an order of possession, per section 55(2)(b) of the Act. I order the order of possession to be effective thirty days after service.

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 July and August 2024, and late fee owing for August.

Residential Tenancy Branch Rules of Procedure, Rule 7.12, states 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 therefore allow the amendment to also include the rent for September, as this was clearly rent that the Tenant would have known about and resulted since the Landlord submitted the application.

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.

The Landlord provided the ledger and testimony to establish the claim for unpaid rent. Based on the ledger and the Landlord's testimony, I find that the total monetary order claim amount is \$5,781.37 (\$3,856.37 + \$1,925.00).

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security deposit of \$962.50, in partial satisfaction of the monetary award.

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 grant an Order of Possession to the Landlord **effective thirty (30) 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 **\$4,918.87** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$5,781.37
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	-\$962.50
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$4,918.87

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: October 3, 2024

Residential Tenancy Branch