

## **DECISION**

### **Introduction**

This hearing dealt with two applications from the Tenant, including:

The Tenant's August 28, 2024, 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

The Tenant's September 9, 2024, 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

The hearing was attended by K.S. as General Manager for the Corporate Entity that owns and operates the multi-unit apartment building that is the residential property, to provide sworn testimony and refer to evidence.

The Tenant did not attend and was not represented at the 30-minute teleconference hearing that occurred on October 11, 2024.

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

The Landlord testified that they were served Notice of the Tenant's two disputes and cautioned that the Tenant failed to name the Landlord correctly in their challenge of the One-Month Notice.

### **Service of Evidence**

The Landlord testified that they did not receive any evidence or documents from the Tenant regarding these two disputes.

The Landlord testified that they served the Tenant with copies of their evidence for each dispute by sending two registered mail packages to the Tenant.

The Landlord provided proof of service by Registered Mail for evidence related to the One Month Notice on September 23, 2024. I reviewed proof of tracking provided and confirm that this package was never collected by the Tenant, but nevertheless deem them served five days after service on September 28, 2024, as required by section 90 of the Act.

The Landlord provided proof of service by Registered Mail for evidence related to the 10 Day Notice on September 24, 2024. I reviewed proof of tracking provided and confirm that this package was never collected by the Tenant, but nevertheless deem them served five days after service on September 29, 2024, as required by section 90 of the Act.

I therefore find that I can consider the Landlord's documentary evidence in my decision making.

## **Preliminary Matters**

I amended the application to include the name of the business entity that owns the multi-unit residential property that contains the Tenant's rental unit. I made this amendment under RTB Rule of Procedure 7.7.

## **Issues to be Decided**

- Should the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act be cancelled? If not:
  - Is the Landlord entitled to an Order of Possession?
  - Is the Landlord entitled to a Monetary Order for Unpaid rent?
- Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

## **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 residential property is an apartment building.

The Landlord referred to proof of an original tenancy agreement, showing that the Tenant has occupied the rental unit since April 2023 after paying a \$775.00 security deposit. The Landlord testified that current rent is \$1,550.00, due on the first day of every-month.

The Landlord testified that the Tenant paid rent by pre-authorized debit (PAD agreement) and that as shown in the Landlord's evidence of NSF charges, the Tenant's payments were returned NSF at least 4 times during this tenancy.

The Landlord testified that they issued a 10-Day Notice to End Tenancy to the Tenant on September 7, 2024, on a previous version of an RTB template Notice document. This Notice identifies that \$1,575.00 was owed by the Tenant on September 1, 2024, and identifies a stated move-out date of September 17, 2024.

The Landlord testified that this Notice was served to the Tenant's door on the same day it was issued.

The Landlord also testified that they are currently owed \$3,155.00 from the Tenant because they have not paid rent for September \$1,550.00 or October 2024, even though they are still living in the rental unit.

The Landlord also requested to recover the \$25.00 costs for NSF payment for September and October 2024 because these are costs that the Landlord incurred due to the Tenant's failure to have the requirement money in their amount when the payment was due as required by the PAD agreement. The Landlord testified that these NSF charges are also specified in the written tenancy agreement that was signed by the Tenant.

## **Analysis**

### **Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?**

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).

I find that the 10 Day Notice was served to the Tenant on September 7, 2024, because it was served in person to them on that day, and the Tenant wrote that they were served on this day in their application to the RTB.

I therefore find that the Tenant had until September 12, 2024, to pay the full amount of the arrears.

Based on the evidence before me, I find the Tenant failed to pay any rent within five days of receiving the 10 Day Notice because the Landlord testified that they are current owed rent for both September and October 2024.

I therefore find that the Landlord is entitled to 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 because the September 7, 2024, Notice complies with section 52 of the Act.

I use my discretion under RTB Policy Guideline 54 to make this Order effective seven (7) days after service on the Tenant because this is the standard timeframe for such Orders under the Act.

**Is the Landlord entitled to a Monetary Order for Rent under section 55 of the Act?**

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.

I find that the Landlord has established a claim for \$3,100.00 in unpaid rent for September (\$1,550.00) and October 2024 (\$1,550.00) because the Landlord testified that rent has not been paid by the Tenant for these two months.

I award rent for the full month of October 2024 because as required by RTB Policy Guideline 3, the purpose of awards for rent is to put the Landlord in the same position they would have been, had rent been paid as required.

I also find that the Landlord is entitled to \$25.00 in compensation related to each of the two NSF charges that the Landlord incurred for September and October 2024.

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.

I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$3,150.00

$\$3,100.00 + \$25.00 + \$25.00 = \$3,150.00$

**Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?**

I did not consider the merits of the Notice dated August 20, 2024, because I am ending the tenancy over the 10-Day Notice dated September 7, 2024, for the reasons provided above.

That said, I refer to RTB Rule of Procedure 7.3, **Consequences of not attending the hearing**, which enables the Arbitrator to dismiss an application if and where the applicant fails to attend the hearing.

For the above reasons, the Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act is dismissed, without leave to reapply.

**Is the Landlord entitled to retain the Tenant's security deposit against monies owed?**

I order under section 38(4) of the Act that the Landlord is entitled to retain the full value of the Tenant's \$775.00 security deposit against rent monies owed by the Tenant.

**Conclusion**

I grant an Order of Possession to the Landlord **effective seven (7) days after service 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 **\$2,375.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$3,150.00
authorization to retain the full value of the security deposit under section 38 of the Act	\$775.00
<b>Total Amount</b>	<b>\$2,375.00</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.

The Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for unpaid rent under section 46 of the Act is dismissed, without leave to reapply.

The Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act is dismissed, without leave to reapply.

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 11, 2024

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Residential Tenancy Branch