

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) under sections 46 and 55 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 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

J.S. attended the hearing for the Tenant.

Y.K. and S.H. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord confirmed having received the Proceeding Package from the Tenant by Registered Mail on September 5, 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 in person on September 10, 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 asserted having provided evidence to the Landlord with the Proceeding Package by Registered Mail on August 30, 2024. The Landlord denied having received evidence from the Tenant. The relevant evidence that the Tenant sought to rely on was duplicated in the Landlord's evidence. For this reason, I order that evidence which was

not served in accordance with section 88 of the Act is sufficiently served for the purposes of the Act pursuant to section 71(2) of the Act.

The Tenant confirmed having received evidence from the Landlord with the Proceeding Package in person on September 10, 2024. I find that the Tenant was served with evidence in accordance with section 88 of the Act.

Preliminary Matter

Increase Rent Claim

At the outset of the hearing, the Landlord sought to increase their monetary claim for unpaid rent from \$5,600.00 to \$11,200.00 to reflect the Tenant's failure to pay \$5,600.00 in monthly rent for September 2024, the additional month of unpaid rent awaiting this hearing.

Rule 7.12 of the Rules of Procedure 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 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 Landlord entitled to an Order of Possession?

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 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 parties agree that the tenancy began on August 1, 2023, and that current monthly rent is \$5,600.00 due on the first day of the month. A security deposit in the amount of \$2,800.00 was credited to unpaid rent for June 2024 with the consent of the parties.

The Tenant asserts that he lost his job in May 2024 and for this reason has been unable to pay monthly rent and utilities in full. The parties agreed to a payment plan for arrears

and that the Tenant would resume regular monthly rent and utilities payments on August 1, 2024.

The Tenant failed to pay rent on August 1, 2024, or any day thereafter. The Landlord issued the 10 Day Notice dated August 27, 2024, with an effective date of September 6, 2024, and served it to the Tenant in person same day. The 10 Day Notice says that the Tenant failed to pay rent in the amount of \$5,600.00 due August 1, 2024, and that the Tenant failed to pay \$1,900.00 for utilities but does not attest to having made a written demand or provide a date for the arrears.

The Tenant filed to dispute the 10 Day Notice on August 28, 2024.

The Tenant further failed to pay rent on September 1, 2024, or any day thereafter.

He asserts he is to imminently receive an inheritance cheque and that he will clear his arrears at that time.

Analysis

Should the Landlord's 10 Day Notice be cancelled?

Section 46 of the Act says that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with the form and content requirements of section 52 of the Act.

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.

The parties agree that the 10 Day Notice was served to the Tenant in person on August 27, 2024. As the Tenant filed to dispute the 10 Day Notice on August 28, 2024, I find they did so within the time permitted by section 46(4) of the Act.

The Tenant did however admit to having not paid rent on August 1, 2024, or any day thereafter. He disputes the 10 Day Notice not because the rent arrears are inaccurate but because he requests an extension on the time to pay rent and because he does not agree with the amount asserted for utilities.

Section 66 of the Act only permits an arbitrator to extend a time limit for a tenant to pay overdue rent where the extension is agreed to by the Landlord. The Landlord was not agreeable to an extension at the hearing and wishes to end the tenancy. I am therefore not permitted to grant an extension.

With respect to the utilities, the Landlord provided no basis for this calculation on the 10 Day Notice and did not assert having made the written 30-day demand required such

that unpaid utilities may be considered unpaid rent. For this reason, the amount requested on the 10 Day Notice for utilities is unenforceable.

While the utilities are unenforceable, I do not find that the 10 Day Notice fails on this issue. I am satisfied that the tenant understood the intention of the 10 Day Notice, such that he disputed it and admitted to having failed to pay rent. He remains unable to pay rent.

I find it reasonable to amend the notice pursuant to section 68(1) of the Act to exclude the \$1,900.00 asserted for utilities. I find that the tenant failed to pay rent in the amount of \$5,600.00 for the month of August 2024, and that he further failed to pay rent in the amount of \$5,600.00 for the month of September 2024.

Therefore, the Tenant's application for cancelation of the Landlord's 10 Day Notice under sections 46 and 55 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 27, 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 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.

In this tenancy, a mature couple, both of whom are presently unemployed, occupy a single-family dwelling such that they likely have significant belongings to move out of the unit. I am told by the Tenant that his wife is undergoing testing for a cancer diagnosis. In view of this, I find it appropriate to order possession of the rental unit effective October 31, 2024, at 1:00 pm, after service of this order on the Tenant.

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.

The parties agree that the Tenant failed to pay rent in the amount of \$5,600.00 each month for the months of August and September 2024.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$11,200.00.

The Landlord further asserted arrears attributed to utilities however that application is not properly before me and as said above, utilities cannot be considered unpaid rent unless written demand has been made more than 30 days prior.

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 refers to an agreement between the parties by email about how rent and utilities arrears would be paid for the months of June and July 2024. The Tenant suggests that the 10 Day Notice is in some way not consistent with that agreement. However, the 10 Day Notice refers to admitted rent arrears for August 2024 only. While the 10 Day Notice includes an undated amount for utilities, it does not assert a date on which a written demand was made, and that amount was not considered when upholding the 10 Day Notice.

Further, an application under this section is with respect to the Act, the regulations or a tenancy agreement. The payment plan agreement by email does not fall within those categories.

I find that the Tenant has not demonstrated that the Landlord failed to comply with the Act, the regulations or a tenancy agreement 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.

Conclusion

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

I grant an Order of Possession to the Landlord **effective October 31, 2024, at 1:00 pm after service of this Order on the Tenant**. 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 **\$11,300.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$11,200.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$11,300.00

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 1, 2024

Residential Tenancy Branch