

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (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 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
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Landlord's agent M.A. and landlord's agent S.M. attended the hearing for the Landlord.

No one attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord stated that they served the Tenants with the Proceeding Package by registered mailing it to the address of the rental unit on September 28, 2024. The Landlord provided the Canada Post Mailing Receipt with the tracking numbers to prove service to each of the Tenants.

I deem the Tenants served in accordance with sections 89 and 90 of the Act.

Service of Evidence

The Landlord stated that they served the Tenants with their evidence by registered mailing it to the address of the rental unit on September 28, 2024. The Landlord provided the Canada Post Mailing Receipt with the tracking numbers to prove service to each of the Tenants.

I deem the Tenants served in accordance with sections 88 and 90 of the Act.

Preliminary Matters

Application Withdrawn

At the outset of the hearing, the Landlord informed me that they would like to withdraw the application ending in 7134. Therefore, this decision only deals with the application ending in 0538.

Monetary Claim

The Landlord also sought to change their monetary claim from \$4,300.00 to \$7,300.00, to reflect the Tenant's failure to pay \$3,000.00 in monthly rent for October 2024, the additional month of unpaid rent waiting for this hearing.

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 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 Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

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 testified that this tenancy began on December 29, 2023, with a monthly rent of \$3,000.00, due on the twenty-ninth day of the month, with a security deposit in the amount of \$1,300.00.

The Landlord stated that they served the 10 Day Notice and statement of account to the Tenants in person on September 18, 2024, by providing it to A.L. The Landlord provided a witnessed Proof of Service form to confirm this service.

The Landlord also testified that three pages of the 10 Day Notice and one page of the statement of account was provided to the Tenants, and that the second page of the 10 Day Notice indicated that \$4,300.00 was due on August 29, 2024. The Landlord

submitted a copy of the 10 Day Notice that confirmed the details provided and also submitted the statement of account as evidence.

The Landlord testified that the Tenant had \$1,300.00 outstanding in rent for August 2024, while no rent at all had been paid for September and October.

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

Based on the evidence before me, I find the Tenant failed to pay the rental arrears within five days of receiving the 10 Day Notice and did not make an application under section 46(4) of the Act within the same timeframe. In accordance with section 46(5) of the Act, due to the failure of the Tenant to take either of these actions within five days, I find the Tenant is conclusively presumed to have accepted the end of this tenancy on September 28, 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 September 28, 2024.

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, did not pay the rental arrears and did not dispute the 10 Day Notice, I award the Landlord an order of possession, per section 55(2)(b) of the Act.

As rent has not been paid and the effective date of the 10 Day Notice is September 28, 2024, I order the order of possession to be effective fourteen days after service.

I caution the Tenants to pay rent until the day they move out and that they may be liable for any enforcement costs for the order of possession.

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 in the amount of \$7,300.00, owing partially for August 2024 and for the entire months of September and October. In reaching this conclusion, I have considered the Landlord's statement of account and testimony, which I found to be persuasive.

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 that the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$7,300.00.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

I have determined that the Landlord is entitled to a monetary order for unpaid rent in the amount of \$7,300.00.

Pursuant to section 72 of the Act, I allow the Landlord to retain the Tenant's security deposit of \$1,300.00, 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 fourteen (14) 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 **\$6,100.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$7,300.00
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	-\$1,300.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$6,100.00

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 18, 2024

Residential Tenancy Branch