

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Tenant, L.A. and the Landlord under the *Residential Tenancy Act* (the Act). The Tenant, L.A.'s Application for Dispute Resolution, filed on September 3, 2024 (the Application), is 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 Landlord's Application for Dispute Resolution, filed on September 9, 2024 (the Cross-Application), is for:

- An Order of Possession based on 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 the Cross-Application from the Tenants under section 72 of the Act

M.S., who confirmed he is acting as Agent for the Landlord, called into the teleconference at the date and time set for the hearing. Although I waited until 9:47 AM to enable the Tenants to call into the teleconference hearing scheduled for 9:30 AM, no one attended the hearing for the Tenants.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that M.S. and I were the only persons who had called into the hearing. M.S. was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenant, L.A. had previously applied to the Residential Tenancy Branch (RTB) for permission to serve the Proceeding Package on the Landlord via text message. L.A.'s Application for Substituted Service of the Proceeding Package was dismissed on September 6, 2024, with leave to reapply. The Landlord states he never received a copy of L.A.'s Proceeding Package and that, the first he heard of L.A.'s Application was upon attending the hearing.

L.A. did not attend the hearing to provide any testimony in support of service of the Proceeding Package or in support of the Application itself. Based on the undisputed testimony of M.S., I find that the Landlord was not served with the Proceeding Package. Consequently, I dismiss L.A.'s Application. For the further reasons set out in the Analysis section below, L.A.'s Application is dismissed without leave to reapply.

M.S. states the Proceeding Package for the Cross-Application was sent via registered mail to each of L.A. and A.M. on September 11, 2024. The Landlord provided a copy of the Canada Post Customer Receipts containing the tracking numbers to confirm service of the Proceeding Package on each of the Tenants. The Landlord also submitted into evidence the signed delivery confirmations dated September 12 and a signed Proof of Service form (RTB-55). M.S. affirmed that the Proceeding Package included copies of all the documents the Landlord submitted to the RTB in support of the Cross-Application.

Based on the submissions and evidence before me, I find that the Tenants were each served with the Proceeding Package, including the Landlord's evidence, for the Cross-Application by registered mail on September 12, 2024, being the date of receipt, in accordance with section 89(1) of the Act.

Preliminary Matters

M.S.'s testimony was that, since the 10 Day Notice was served on the Tenants, the Tenants have continued to live in the rental unit and not pay rent. Rule 7.12 of the RTB 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.

M.S. Requested that the Cross-Application be amended to include a claim for unpaid rent for September and October 2024 in addition to a request that the Landlord be permitted to retain the Tenants' security deposit in partial satisfaction of the requested monetary award.

I find it could be reasonably anticipated by the Tenants that the Landlord would seek compensation for unpaid rent for the months they have continued to reside in the rental unit since the 10 Day Notice was issued. I find it could similarly be anticipated by the Tenants that the Landlord would seek to retain their security deposit in partial satisfaction of any unpaid rent. I therefore allow the Landlord to claim a monetary order for unpaid rent for August, September and October 2024 and to request that the Tenants' security deposit be applied towards the monetary order under Rule 7.12.

Issues to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order?

Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order requested?

Is the Landlord entitled to recover the filing fee for the Cross-Application from the Tenants?

Background and Evidence

I have reviewed all evidence before me, including testimony of the parties, but will refer only to what I find relevant for my decision.

The tenancy agreement submitted into evidence by the Landlord shows that the tenancy began on October 1, 2023, with a monthly rent of \$1,995.00, due on the first day of the month. M.S. states the Tenants paid a security deposit equal to half a month's rent, being \$997.50, the day before the tenancy commenced and confirmed that no pet damage deposit was paid.

M.S.'s sworn testimony was that the Tenants failed to pay rent when it was due on August 1, 2024. M.S. states the 10 Day Notice was served by hand to the rental unit on August 26. A Proof of Service form (RTB-34) was submitted into evidence by the Landlord stating the 10 Day Notice was served to the occupant that answered the door at 1:00pm on August 26 and states the Tenant, L.A. later emailed and confirmed receipt of the 10 Day Notice. The Proof of Service form is signed by M.S., who served the documents, and a witness, A.G., who observed service of the documents.

The Landlord's evidence includes an email from the Tenant, L.A. dated September 3, 2024, acknowledging receipt of the 10 Day Notice. L.A.'s email states she is doing everything she can to get the money and that, if she cannot stay, she will be on the street with her 10-year-old daughter.

M.S. states that, to the best of his knowledge, the Tenants continue to reside in the rental unit and that neither Tenant has paid any money towards rent since the 10 Day Notice was served.

The Tenant, L.A. filed an application to dispute the 10 Day Notice on September 3, 2024 but, as noted earlier, L.A.'s Application was never served on the Landlord.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Is the Landlord entitled to an Order of Possession and a Monetary Order?

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 RTB. 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).

Based on M.S.'s testimony and the documentary evidence, I find that the Landlord served the 10 Day Notice by leaving it at the Tenants' residence with an adult who apparently resided there on August 26, 2024, in accordance with section 88(e) of the Act. In the absence of any evidence regarding who the individual was that the 10 Day Notice was handed to, and in light of the email correspondence from L.A. to M.S. dated September 3, I find the Tenants were duly served and had received the 10 Day Notice by August 31, 2024. Therefore, the Tenant had until September 5 to dispute the 10 Day Notice or to pay the full amount of the arrears.

L.A.'s Application was filed on September 3, 2024, within the required five days, but this was never served on the Landlord. Additionally, it is undisputed that the Tenants have not paid the monthly rent since August 1. Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. For the above reasons, together with the Tenants' failure to attend the hearing or provide any evidence, I have dismissed L.A.'s Application to cancel the 10 Day Notice, without leave to reapply.

Section 46(2) of the Act requires that all notices issued under section 46 must comply with section 52 of the Act. Section 55(1) of the Act further states that, if a landlord's notice to end tenancy complies with section 52 of the Act, the director must grant the landlord an order of possession if the landlord's notice to end tenancy is upheld during the dispute resolution proceedings.

I have reviewed the 10 Day Notice and find that it complies with the formal requirements set out in section 52. The 10 Day Notice is signed and dated by the Landlord, states the address of the rental unit, sets out the grounds for ending the tenancy, and it is in the approved form (RTB-30). Therefore, I find that the Landlord is entitled to an Order of Possession based on the 10 Day Notice under sections 46 and 55 of the Act.

Policy Guideline #54 sets out factors to consider in determining the effective date of an order of possession. I find that the relevant factors in the present case are as follows:

- Rent has not been paid since July 2024
- The Tenants had resided in the rental unit for less than one year when the 10 Day Notice was issued
- The Tenant, L.A. indicated in an email to the Landlord that she has a 10-year-old child who resides with her

Policy Guideline #54 states that the effective date for orders of possession, when the effective date of the notice to end tenancy has already passed, have generally been set for seven days after the order is received. Further, it states that the arbitrator has the

discretion to set the effective date of the order of possession based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

To balance the interests of both parties and in consideration of all the circumstances listed above, I grant the Landlord an Order of Possession effective at 1:00pm on October 31, 2024. I further find that the tenancy ends on the date of this decision, per section 44(1)(f) of the Act.

Section 55(1.1) of the Act provides that where a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with section 52, the landlord must be granted a monetary order for unpaid rent. Based on the undisputed testimony of M.S., I find that the Tenants are now in arrears of \$1,995.00 for each of the three months of August, September and October 2024, totaling \$5,985.00. Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$5,985.00.

Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the Monetary Order?

Section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it.

Based on M.S.'s undisputed testimony, I accept that the Tenants have not vacated the rental unit, nor have they provided a forwarding address. As I have found the tenancy ends on the date of this decision, I find that the 15-day deadline imposed by s. 38(1) of the Act has not yet passed.

I accept the Landlord's evidence that a security deposit of \$997.50 was paid by the Tenants on September 30, 2023. I allow the Landlord to retain the Tenants' security deposit of \$997.50, plus interest of \$25.88, in partial satisfaction of the monetary award under sections 38(3) and 72 of the Act.

Is the Landlord entitled to recover the filing fee for the Cross-Application from the Tenants?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for the Cross-Application under section 72 of the Act.

Conclusion

I dismiss the Tenant, L.A.'s Application to cancel the 10 Day Notice under section 46 of the Act, without leave to reapply.

I grant an Order of Possession to the Landlord **effective by 1:00 PM on October 31, 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 **\$5,061.62** under the following terms:

Monetary Issue	Granted Amount
A Monetary Order for unpaid rent under sections 67 and 55 of the Act	\$5,985.00
Authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested under sections 38(3) and 72 of the Act	-\$997.50
Amount of interest owed on security deposit from September 30, 2023 to date of this Order	-\$25.88
Authorization to recover the filing fee for this application from the Tenants under section 72 of the Act	\$100.00
Total Amount	\$5,061.62

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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 9, 2024

Residential Tenancy Branch