

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

and the Landlord's Application for Dispute Resolution under the Act for:

- an Order of Possession based on a 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 Landlord confirmed having received the Proceeding Package from the Tenant by email on September 13, 2024, though raised that email is not an approved form of service for this tenancy. While email is not an approved form of service for this tenancy, as the Landlord has acknowledged receipt and is prepared to proceed, I find that the Proceeding Package has been sufficiently served to the Landlord for the purposes of the Act pursuant to section 71(2) of the Act.

The Tenant confirmed having received the Proceeding Package from the Landlord by Registered Mail on October 7, 2024. I find that the Proceeding Package has been served to the Tenant in accordance with section 89(2) of the Act.

Service of Evidence

The Tenant did not submit evidence.

The Tenant confirmed having received evidence from the Landlord with the Proceeding Package by Registered Mail on October 7, 2024. I find that the evidence has been served to the Tenant in accordance with section 88 of the Act.

Preliminary Matters

The Landlord sought to increase their monetary claim from \$1,550.00 to \$3,110.00 to reflect the Tenant's failure to pay \$1,530.00 in monthly rent for October 2024, the additional month of unpaid rent waiting for this hearing, as well as a \$25.00 administrative fee for late payment of rent per paragraph 10 of their tenancy agreement.

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

Should the Landlord's 10 Day Notice be cancelled?

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 parties agree that the tenancy began on February 15, 2019, and that current monthly rent in the amount of \$1,530.00 is due on the first day of the month. The Tenant paid a security deposit in the amount of \$697.50 on February 8, 2019, and a pet damage deposit in the amount of \$697.50 on February 15, 2019. The Tenancy agreement permits a monthly administrative penalty of \$25.00 for late payment of rent in accordance with section 7(1) of the Residential Tenancy Regulation.

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

The Landlord issued the 10 Day Notice on September 4, 2024, with an effective date of September 14, 2024. The 10 Day Notice was posted to the door of the rental unit on September 4, 2024, and the Tenant confirms having received the notice same day.

The Tenant filed to dispute the 10 Day Notice on 9, 2024, not because she disputes the arrears but because at the time she sought additional time to pay rent.

The Tenant admits to having failed to pay rent for September and October 2024. She has found alternate housing and intends to vacate the unit by October 15, 2024.

Analysis

Should the Landlord's 10 Day Notice be cancelled?

Section 46 of the Act states 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 Tenant receives the notice.

I find that the 10 Day Notice dated September 4, 2024, was served in accordance with section 88 of the Act, by attaching a copy to the Tenant's door and is acknowledged received same day.

The Tenant admits to having failed to pay rent on September 1, 2024, or any day thereafter and that she further failed to pay rent on October 1, 2024, or any day thereafter. She remains unable to pay rent.

For this reason, the Tenant's application for cancellation 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 the 10 Day Notice?

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 September 4, 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. I am told by the Tenant that they have secured alternate housing and intend to vacate the unit by October 15, 2024. In view of this, I order possession of the rental unit effective seven (7) days after service of this order on the Tenant.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Based on the evidence before me and the admissions of the Tenant, I find that the Landlord has established a claim for unpaid rent owing 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.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$3,110.00.

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security deposit in the amount of \$697.50 plus interest in the amount of \$28.47 (calculated from December 8, 2019, to October 9, 2024) as partial satisfaction of the monetary award. I further allow the Landlord to retain the Tenant's pet damage deposit in the amount of \$697.50 plus interest in the amount of \$28.48 (calculated from December 15, 2019, to October 9, 2024) as partial satisfaction of the monetary award.

I offset the Monetary Order by a total of \$1,451.95.

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 without leave to reapply.

I grant an Order of Possession to the Landlord **effective seven (7) days after service of this Order on the Tenant, at 1:00 PM on that day**. 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 **\$1,758.05** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$3,110.00
authorization to retain the Tenant's security deposit and pet damage deposit in partial satisfaction of the Monetary Order	-\$1,451.95
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$1,758.05

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 9, 2024

Residential Tenancy Branch