

DECISION

Introduction

This hearing dealt with the Tenant's Application of September 10, 2024, 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 regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord filed a cross-application on September 17, 2024, requesting:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 46 and 55 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)

I find the Landlord was served on August 24, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Tenant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

Service of Evidence

The Tenant says they were unable to submit any evidence with their application because the Landlord cut off their internet access.

Under Rule of Procedure 7.9, I decline to adjourn this matter to allow the Tenant more time to prepare evidence because I am not convinced that the Tenant made a reasonable effort to access some other means to prepare their evidence. I find the Tenant could have attended their bank and printed off their records, mailed them to their lawyer and had their lawyer submit them. Or the Tenant could have accessed public internet at a coffee shop or library to upload screenshots of their records to the dispute access site.

Preliminary Matters

Under section 64(3)(c) of the Act, I amend the application to remove the name of the second applicant MN. I find they have not signed a tenancy agreement with the Landlord, and they have not paid rent directly to the Landlord to establish a tenancy agreement. I find MN is an occupant rather than a Tenant.

Issues to be Decided

Is the Tenant entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act?

Should the Landlord's 10 Day Notice be cancelled? If not, 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 to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act?

Is the Tenant entitled to an order for the Landlord to provide services or facilities required by law under section 27 of the Act?

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act?

Is the Tenant entitled to authorization to change the locks to the rental unit under section 70(2) of the Act?

Is the Landlord either party entitled to recover their filing fee for this application?

Background and Evidence

The parties agree the Tenant began residing in the rental unit as a short term rental on July 1, 2022. The parties initially agreed the Tenant would pay \$1,000.00 every two weeks, equal to \$500.00 per week.

The Landlord provided a copy of text messages between the parties from September 2023, showing the Tenant agreed to the Landlord's request to increase rent by \$100.00 per week after the Tenant's partner MN began to spend more time at rental unit.

The Tenant's text message dated September 18, 2023, in reply to the Landlord's request to increase rent by \$100.00 per week says: "Yes that sounds fair to me...."

The following year, on September 1, 2024, the Landlord sent a text message to the Tenant saying they are \$2,600.00 behind in rent payments. Later that day the Landlord sent a text message saying: "Tomorrow is Monday, your owing is up to \$3200."

The Landlord provided evidence to show the Tenant owes rental arears as follows:

Month	Amount of rental arears owing
March 2024	\$200.00
April 2024	\$800.00
May 2024	\$800.00
August 2024	\$1,400.00
TOTAL	\$3,200.00

The Landlord says the Tenant agreed to pay 50% of the utilities for the residence. The Tenant disagrees. The text messages in evidence indicate the Landlord requested 50% of the utility bills. However, the Landlord has not presented evidence that the Tenant directly agreed to pay 50% of utilities.

The Landlord estimates the Tenant made three payments of 50% of the utilities. The Tenant estimates they made around five payments towards utilities, even though they do not agree they owed that amount.

The Landlord provided a copy of a letter dated August 6, 2024, requesting payment of \$123.33 towards utilities by September 6, 2024. The Tenant says they paid this amount on August 5, 2024. The bank records provided by the Landlord for August 2024, do not indicate a payment of that amount from the Tenant on any date in August.

On September 7, 2024, the Landlord issued a 10 Day Notice, for \$3,200.00 in unpaid rent and \$123.33 in unpaid utilities. The 10 Day Notice provides that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of September 16, 2024.

The Tenant acknowledged receipt of the 10 Day Notice on the door of the rental unit on September 7, 2024. The Tenant disputed the 10 Day Notice on September 10, 2024.

The Tenant says they did not make any rent payments after receiving the 10 Day Notice because they believed the previous rent increase of \$100.00 per week for the additional occupant was unlawful and had resulted in an overpayment of rent and they did not agree to pay 50% of the utilities.

Analysis

Is the Tenant entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act?

The Tenant says the rent increase of \$100.00 per week since late September 2023, was unlawful. The Tenant says they also made payments towards utilities that were unlawful.

I find the Tenant's text message of September 18, 2023, indicates their agreement to pay a \$100.00 weekly increase in rent because MN began to occupy the unit as an additional occupant.

The Tenant says the rent increase does not comply with the Act. However, I find the text messages and the conduct of the parties, is sufficient to show an agreed amendment to the parties' verbal tenancy agreement. I find a notice of rent increase is not required when rent is increased due to an additional occupant.

Furthermore, I find that the legal principle of estoppel applies to this situation. Although the Tenant often paid rent late, and sometimes missed payments, I find they consistently paid the agreed amount of \$600.00 per week from September 2023 to August 2024. The text messages in evidence show the Tenant did not dispute this increase with the Landlord prior to receiving the 10 Day Notice.

I find the Tenant is estopped from now disputing this rent increase because the Landlord relied on the Tenant's consistent payments of the agreed amount, and the Tenant did not notify the Landlord they disputed the rent increase.

I find the Tenant has not provided evidence to establish an overpayment of utilities. They did not present evidence that they disputed paying 50% of the utilities when it was requested by the Landlord, and they did not present evidence of what amount they paid towards utilities.

Based on the above, I dismiss this portion of the Tenant's application, without leave to reapply.

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) 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.

Although the Tenant disputed the 10 Day Notice within five days as required, I find they have not presented a valid reason for withholding rent under the Act or the tenancy agreement. The Tenant's dispute of a rent increase was dismissed in the previous section of this decision.

I have reviewed all documentary evidence, and I find that the Tenant was obligated to pay the weekly rent in the amount of \$600.00. I find the Tenant failed to pay any amount of rent after the 10 Day Notice was issued. Even if the Tenant had established an overpayment of utilities, which they have not, I find the amount would not be greater than the amount of rent owing on the 10 Day Notice.

For the above reasons, the Tenant's application 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 is dismissed, without leave to reapply.

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. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession.

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. I find that the Notice complies with section 52 of the Act.

The parties agree the last rent payment was \$600.00 on August 21, 2024.

Based on the evidence and the testimony of both parties, on a balance of probabilities, I find the Landlord has established a claim for unpaid rent as follows:

Date	Amount owing
March 2024	\$200.00
April 2024	\$800.00
May 2024	\$800.00
August 2024	\$1,400.00
September 9, 2024	\$600.00
September 16, 2024	\$600.00

September 23, 2024	\$600.00
September 30, 2024	\$600.00
October 7, 2024	\$600.00
TOTAL	\$6,200.00

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act in the amount of \$6,200.00.

I find the Landlord has not presented sufficient evidence to establish the Tenant's agreement to pay 50% of the utilities. Therefore, I dismiss this portion of the Landlord's claim, without leave to reapply.

Is the Tenant entitled to an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act?

I find the Tenant has not presented sufficient evidence to establish a claim for a rent reduction. For example, the Tenant has not provided evidence that they requested repairs that the Landlord failed to complete, or that the Landlord promised to provide services that were not provided.

Therefore, this portion of the Tenant's application is dismissed, with leave to reapply.

Is the Tenant entitled to an order for the Landlord to provide services or facilities required by law under section 27 of the Act?

As the tenancy is ending, I decline to make an order under this part. This portion of the Tenant's application is dismissed, without leave to reapply.

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act?

Section 70 of the Act states for an Arbitrator to suspend or set conditions on a Landlord's right to enter the rental unit if they are satisfied that the Landlord is likely to enter the rental unit in contravention of section 29 of the Act, which requires the Landlord to give 24 hours written notice before entering the rental unit. The arbitrator may authorize the Tenant to change the locks, keys or other means that allow access to the rental unit, and prohibit the Landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

As the tenancy is ending, I decline to make an order under this part.

The Tenant's application for an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act is dismissed, without leave to reapply.

Is the Tenant entitled to authorization to change the locks to the rental unit under section 70(2) of the Act?

As the tenancy is ending, I decline to make an order under this part. This portion of the Tenant's application is dismissed, without leave to reapply.

Is the either party entitled to recover their filing fee for this application?

As the Landlord was mostly successful in their application, I find they are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

I dismiss the Tenant's request for their filing fee under section 72 of the Act, without leave to reapply.

Conclusion

I grant an Order of Possession to the Landlord **effective seven (7) days 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 **\$6,300.00** for rent owed from March 2024 to October 7, 2024, and for the recovery of the filing fee for this application. 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 in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the Tenant's application to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act, with leave to reapply.

The remainder of the Tenant's application 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

Residential Tenancy Branch