

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 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
- 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 20, 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
- a monetary order for rent not paid in the required time 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)

I find the Landlord attended the hearing and they are sufficiently served in accordance with section 71(2)(c) of the Act.

The Landlord provided a copy of a signed and witnessed Proof of Service form to confirm service of their Proceeding Package to the door of the Tenant's rental unit on September 22, 2024.

Preliminary Matters

The Landlord called into this teleconference at the date and time set for the hearing of this matter. Although I waited until 11:14 AM to enable the Tenant to connect with this teleconference hearing scheduled for 11:00 AM, the Tenant did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Tenant's own Notice of Hearing.

Based on Rule 7.1 of the Rules of Procedure, the hearing commenced at the scheduled time in the absence of the Tenant. Under Rule 7.3, I order the Tenant's application dismissed in its entirety, without leave to reapply.

Under section 64(3)(c) of the Act, I amend the Landlord's application to include the Landlord's name as indicated on the tenancy agreement in evidence.

At the outset of the hearing the Landlord sought to increase their monetary claim to \$3,800.00 to reflect the Tenant's failure to pay \$1,900.00 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 applications were filed.

Issues to be Decided

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 Landlord entitled to recover their filing fee for this application?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the Landlord and the Tenant on March 13, 2023, indicating a monthly rent of \$1,900.00, due on the first day of each month for a tenancy commencing on April 1, 2023, with a security deposit of \$950.00, provided on March 13, 2023
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 9, 2024, for \$1,900.00 in unpaid rent. 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 19, 2024
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was served to the door of the rental unit
- A Direct Request Worksheet showing the rent owing for September 2024

The Landlord testified that the last rent payment received from the Tenant was for August 2024.

The Landlord says the Tenant sent them an email on September 28, 2024, saying they are abandoning the rental unit, and leaving the country for six months. The Landlord says the Tenant did not provide a forwarding address.

The Landlord says the Tenant's personal items are still in the rental unit. The Landlord requests an order of possession and a monetary order for unpaid rent and filing fees. The Landlord requests to retain the Tenant's security deposit in partial satisfaction of rent owing.

Analysis

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.

Although the Tenant disputed the 10 Day Notice within five days as required, I find they have not indicated a valid reason for withholding rent even if they had attended the hearing to present their argument.

Since I have dismissed the Tenant's application in the preliminary section of this decision, section 55(1) of the Act says I 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.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent. I have reviewed all documentary evidence, and on a balance of probabilities, I find the Landlord has established a claim for unpaid rent for September and October 2024.

Under Policy Guideline 3, I find the Landlord is entitled to compensation for rent owing for September and October 2024, because the earliest date the Tenant could have ended the tenancy with their email of September 28, 2024, would have been October 31, 2024.

Therefore, I grant the Landlord a monetary order under section 67 of the Act in the amount of \$3,800.00.

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

As the Landlord was 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.

Set off

Under section 72(2) of the Act, I authorize the Landlord to retain the Tenant's security deposit plus interest, in partial satisfaction of the monetary award. I find interest of \$35.57 has accrued on the deposit to the date of this hearing, for a total amount of \$985.57.

Summary

I find the Landlord is entitled to a monetary order for \$2,914.43 as follows

Description	Amount
Unpaid rent	\$3,800.00
Filing fee	\$100.00
<i>Retain deposit</i>	- \$985.57
TOTAL	\$2,914.43

Conclusion

I grant an Order of Possession to the Landlord **effective two (2) 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 authorize the Landlord to retain the Tenant's security deposit of \$985.57 under section 72 of the Act.

I grant the Landlord a Monetary Order in the amount of **\$2,914.43** for rent owed for September and October 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 in its entirety, 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 16, 2024

Residential Tenancy Branch