Dispute Resolution Services
Residential Tenancy Branch
Ministry of Housing

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

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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenant was served on September 18, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing.

Service of Evidence

Based on the submissions before me, I find that the Landlord’s evidence was served to the Tenant in accordance with section 88 of the Act.

No evidence was received from the Tenant.

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 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?

Preliminary Matters

- Update Landlord's Name on Tenant's Application

Amended Tenant's application to list Landlord's name from tenancy agreement.

- Increase Monetary Claim

At the outset of the hearing the Landlord sought to increase their monetary claim from $1,191.00 to $3,091.00 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 4.2, 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.

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.

Evidence was provided showing that this tenancy began on September 1, 2021, with a monthly rent of $1,900.00, due on the first day of the month, with a security deposit in the amount of $900.00.

The Tenant is disputing a 10 Day Notice for Unpaid Rent for $1,191.00 dated September 3, 2024 (the 10 Day Notice). The Landlord has applied for a Monetary Order for unpaid rent and an Order of Possession based on the 10 Day Notice and requested to retain the security deposit.

The undisputed testimony of the Landlord is that an organization pays $709.00 directly to the Landlord for a portion of the Tenant's rent and then the Tenant pays the remaining $1,191.00. The undisputed evidence and testimony of the Landlord is that for September 2024 the Landlord only received $709.00 towards September 2024 rent and the Tenant never paid the remaining $1,191.00. The Landlord advised they issued the 10 Day Notice but still never received the remaining amount owed for rent. The undisputed testimony of the Landlord is that the Tenant continued to occupy the rental unit and did not pay rent for October 2024. The Landlord is seeking $3,091.00 in unpaid rent for September and October 2024.

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).

I find that the 10 Day Notice was duly served to the Tenant on September 3, 2024, and that the Tenant had until September 8, 2024, to dispute the 10 Day Notice or to pay the full amount of arrears. The Tenant disputed the 10 Day Notice on September 6 2024, which is within the timeframe required.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

> **Rule 7 – During the hearing**
> **7.1 Commencement of the dispute resolution hearing**
> The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.
> **7.3 Consequences of not attending the hearing**
> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the Tenant I order the application dismissed without leave to reapply.

Additionally, based on the undisputed testimony of the Landlord and the evidence, I find that the 10 Day Notice was issued for the valid reason of unpaid rent for September 2024. The Tenant did not attend to present any legal reason for withholding rent or to establish that rent was paid.

For the above reasons, the Tenant's application for cancellation of the 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 a Notice to End Tenancy?

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 10 Day 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 10 Day Notice complies with section 52 of the Act.

The undisputed evidence of the Landlord is that the Tenant owed $1,191.00 in unpaid rent when the 10 Day Notice was issued. I find that the Tenant continued to occupy the rental unit after the 10 Day Notice was served and did not pay rent for October 2024 or the amount listed on the 10 Day Notice. Therefore, I find the Landlord is entitled to recover the unpaid rent listed on the 10 Day Notice and the unpaid rent for October 2024. As stated above the Tenant did not attend the hearing to establish, they had a legal reason to withhold rent or that rent was paid.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of $3,091.00

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

Under section 72 of the Act, I allow the Landlord to retain the Tenant’s security deposit of $900.00, 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 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 grant the Landlord a Monetary Order in the amount of **$2,291.00** under the following terms:

Monetary Issue	**Granted Amount**
a Monetary Order for unpaid rent and/or utilities under section 67 of the Act	$3,091.00
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	-$900.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	$100.00
Total Amount	**$2,291.00**

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 Small Claims Court of British Columbia 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.

The Landlord is authorized to keep the Tenant’s security deposit as partial satisfaction for the amount owed.

The Tenant's application for cancellation of the 10-Day Notice under sections 46 and 55 of the Act 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 16, 2024

Residential Tenancy Branch