

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 recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also 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) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act
- Day Notice) under sections 46 and 55 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant was served on September 18, 2024, in person, in accordance with section 89(1) of the Act. Proof of service form was provided.

I find that the Landlord was served on September 20, 2024, in person, in accordance with section 89(1) of the Act. Proof of service form was provided.

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 besides copies of the One Month Notice for Cause and the 10 Day Notice for Unpaid Rent.

Issues to be Decided

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to more time to cancel the Landlord's One Month Notice and 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?

Preliminary Matters

- Update Landlord's Name on Tenant's Application

Amended Tenant's application to list Landlord's legal business name.

- Increase Monetary Claim

At the outset of the hearing the Landlord sought to increase their monetary claim from \$471.00 to \$1,992.00 to reflect the Tenant's failure to pay \$1,471.00 in monthly rent for October 2024 the additional month of unpaid rent waiting for this hearing and \$25.00 late fees.

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 July 15, 2021, with a monthly rent of \$1,471.00, due on the first day of the month, with a security deposit in the amount of \$675.00.

The Tenant is disputing a 10 Day Notice for Unpaid Rent for \$471.00 dated September 2, 2024 (the 10 Day Notice) and a One Month Notice for Cause dated September 2, 2024 which was issued for the repeated late payment of rent (One Month Notice). The parties disagree about the dates the notices were served. The Landlord has applied for a Monetary Order for unpaid rent and an Order of Possession based on the 10 Day Notice.

Service of Notices

The Landlord's position is that the 10 Day Notice and One Month Notice were served September 2, 2024, in person. The Landlord provided a proof of service form for each notice, which were signed by witness J.J. (the Witness) and the Witness attended the hearing. The Witness originally provided a different date the notices were served but then testified it was served September 2, 2024.

The Landlord's agent N.G. (the Landlord's Agent) argued that the Tenant listed on their application that the One Month Notice was served on September 2, 2024.

The Tenant filed their application to dispute the 10 Day Notice and One Month Notice on September 17, 2024. In the Tenant's application they stated the 10 Day Notice was served September 5, 2024 and the One Month Notice September 2, 2024. In the hearing the Tenant change their position and argued the 10 Day Notice was served September 8, 2024 or September 10, 2024 and the One Month Notice was served September 14, 2024. Then the Tenant further changed their testimony and argued that the One Month Notice was served the last week of September 2024.

When asked why the Tenant was late disputing the notices the Tenant argued they were not late disputing the notices.

10 Day Notice

The Landlord's position is that the Tenant only made a partial payment towards September 2024 rent and owed the remaining \$471.00 towards September 2024 rent when the 10 Day Notice was served. The Landlord's building manager D.J. (the Building Manager) argued the Tenant also did not pay rent for October 2024 and now owes for October 2024 rent and \$25.00 late fees for September and October 2024. The Landlord advised section 10 of the tenancy agreement authorizes a \$25.00 late fee. The Landlord's position is that the Tenant owes \$1,992.00.

The Tenant's position is that they tried to pay the remaining \$471.00 but the Building Manager would not accept the rent. The Building Manager argued the Tenant tried to pay on September 15, 2024, and they advised the Tenant to wait till Monday so the Building Manager could speak to the RTB since the Landlord already filed an application regarding the 10 Day Notice. The Building Manager argued the Tenant never tried to pay again and did not pay any rent for October 2024. I will note the

communication tab on the Dispute Management Site (DMS) notes a call from the Landlord inquiring about accepting late rent.

One Month Notice

The Landlord's position is that the Tenant always pays rent late. The Landlord's Agent argued the Tenant will often make a partial payment for the 1st of the month and then the remaining balance is paid later. The Landlord's Agent argued in 2023 9 of the 12 payments were late and 6 of the 8 payments for 2024 were late. The Landlord's Agent advised that notices were given to the Tenant that the Tenant needed to pay rent on the 1st of the month to avoid eviction. Copies of warning letters from February 14, 2023, and June 3, 2024, were submitted as evidence. The Landlord also provided 3 past 10 Day Notices for Unpaid Rent given to the Tenant.

The Tenant's position is that they normally pay a portion by the 1st of the month and then pay the remaining amount a couple days later.

Analysis

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to more time to cancel the Landlord's 10 Day Notice?

Section 46 of the Act states that upon receipt of a 10-Day Notice, the tenants 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 tenants do 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).

The 10 Day Notice was served in-person; however, the parties disagree about when it was served. The Tenant disputed the 10 Day Notice September 17, 2024.

I find the following pieces of evidence and facts support that the 10 Day Notice was served on September 2, 2024. The Witness provided inconsistent dates; however, the proof of service form, which was signed by the Witness, does corroborate the Landlord's position that the 10 Day Notice was served September 2, 2024. On the other hand, the Tenant has provided no evidence to support when they were served the 10 Day Notice and provided 3 different dates on when they received the 10 Day Notice. The Tenant argued the 10 Day Notice was served September 8, 2024, or September 10, 2024; however, if the Tenant's application they listed the 10 Day Notice as served September 5, 2024. I find the Tenant provided very inconsistent statements without any evidence to support when they received the 10 Day Notice. Furthermore, even if the Tenant was served September 10, 2024, they are late disputing the 10 Day Notice.

Based on the above, I prefer the submission of the Landlord, as they have supporting evidence to corroborate when the 10 Day Notice was served.

I find that the 10 Day Notice was duly served to the Tenant on September 2, 2024, and that the Tenant had until September 7, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The Tenants have applied for dispute resolution requesting more time to cancel a notice to end tenancy. Section 66 of the Act states that the director may extend a time limit established by the Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the notice.

The effective date on the 10 Day Notice was September 12, 2024 and the Tenant made their application for dispute resolution for more time on September 17, 2024, which is after the effective date of the 10 Day Notice. Even if the Tenant could establish grounds that meet the requirements of exceptional circumstances, I cannot grant an extension of time once the effective date of the 10 Day Notice has passed. Furthermore, even if the Tenant did not dispute after the effective date on the 10 Day Notice, I find that the Tenant has provided no argument that would qualify as an exceptional circumstance.

Based on the above, the Tenant is conclusively presumed to have accepted the end of the tenancy under section 46(5).

For the above reasons, the Tenant's application for cancellation of the 10 Day Notice and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 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 Notice complies with section 52 of the Act.

While the 10 Day Notice was issued for unpaid rent of \$471.00 for September 2024, the Tenant continued to occupy the rental unit and failed to pay rent for October 2024. The Tenant confirmed October 2024 rent was not paid. Additionally, I find the late fee included the tenancy agreement complies with section 7(2) of the Regulation and is included in the amount owed for unpaid rent.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent and late fee of \$1,992.00.

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to more time to cancel the Landlord's One Month Notice?

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

The Tenant disputed this notice on September 17, 2024.

Based on the testimony and evidence of both parties, I find that the One Month Notice was served September 2, 2024. In the Tenant's own application they stated the date they received the One Month Notice was September 2, 2024. In the hearing the Tenant then provided different dates for when they received the One Month Notice. First it was September 14, 2024 and then the Tenant claimed they received it on the last week of September 2024, which would have been after the Tenant filed their application. The Landlord provided a proof of service form, which was signed by the Witness and stated it was served September 2, 2024. The Witness did provide two different dates, I find that the proof of service form does support that it was served September 2, 2024. Additionally, I find the Tenant's testimony to be even more inconsistent and the Tenant had no evidence to support their point. Furthermore, the Tenant's application originally supports the Landlord's position that the One Month Notice Was served September 2, 2024. As such, I prefer the evidence of the Landlord as they have evidence to support their position.

As such, I find that the One Month Notice was served September 2, 2024 in person. I find the Tenant had until September 12, 2024 to dispute the One Month Notice and the Tenant applied after the deadline on September 17, 2024.

The Tenant has applied for dispute resolution requesting more time to cancel a notice to end tenancy. Section 66 of the Act states that the director may extend a time limit established by the Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end

tenancy beyond the effective date of the notice. Policy Guideline #36 states that “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit”. The guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

The Tenant has not presented any evidence or submissions that they had exceptional circumstances that prevented them from disputing the One Month Notice on time. Accordingly, the Tenant’s request to extend a time limit to file this application is dismissed.

I still must consider whether the Landlord has demonstrated some cause to issue the One Month Notice. Based on the testimony of both parties, the warning letters and past 10 Day Notices, I find that the Landlord has provided evidence to establish the Tenant was late paying rent at least 3 times. The Tenant’s own testimony confirmed that the Tenant often only makes a partial payment on the 1st of the month and then pays the remaining balance afterwards. Based on the evidence of the Landlord’s Agent I find that rent has been late 9 times in 2023 and 6 times in 2024, which is above the 3 months required to establish repeated late payment.

The full amount of rent is due in accordance with the tenancy agreement, which based on the Tenant’s tenancy agreement is the first of the month. I find that making partial payments on the first of the month does not qualify as paying rent on time. The Tenant must pay the full amount of rent when it is due.

I find the Landlord has established the Tenant has failed to pay rent in accordance with the tenancy agreement, which requires rent to be paid on the first of the month.

For the above reasons, the Tenant’s application for cancellation of One Month Notice and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act is dismissed, without leave to reapply.

While I have already granted an Order of Possession based on the 10 Day Notice, I find that the Landlord would also be entitled to an Order of Possession due to the One Month Notice.

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 October 31, 2024 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 **\$2,092.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent and/or utilities under section 67 of the Act	\$1,992.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$2,092.00

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 Tenant's entire 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 18, 2024

Residential Tenancy Branch