

## **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 not paid in the required time
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing dealt with the Tenants' 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) under section 48 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 make repairs to the rental unit under sections 32 and 62 of the Act
- An order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that the Tenants were served on September 28, 2024, by registered mail, in accordance with section 89(1) of the Act. Canada Post tracking number and proof of service was provided as evidence.

I find that the Landlord was served on September 30, 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.

The Landlord argued they received a USB from the Tenants but did not receive a Digital Evidence Details #RTB-43 form, so the Landlord did not try to view the evidence. The Tenants argued they spoke with an Information Officer with the RTB who advised USB is an acceptable way to provide evidence. The Tenants also argued they did not check with the Landlord that they were able to view the USB but argued they checked that the USB was compatible with all computers.

When a party submits digital evidence, they must also provide the other party with the information required under Rule of Procedure 3.10.01 using the Digital Evidence Details form (form RTB-43), as stated in Rule of Procedure 3.10.4. Rule of Procedure 3.10.5 states that before the hearing, a party providing digital evidence must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Based on the submissions of the parties, I find that the Tenants did not follow Rule of Procedure 3.10.4 and 3.10.5 and I decline to consider the Tenants evidence, as it was not properly served.

## **Preliminary Matters**

- Amending Application at Time of Hearing

The Tenants advised they were served 2 additional notices on October 7, 2024, and October 18, 2024, which they wanted addressed at this hearing. The Tenants did not submit an amendment or serve the Landlord with any amendment advising that the hearing would address the additional notices served in October 2024. For an amendment to be made at the time of the hearing, all parties must consent to the amendment, as per Rule of Procedure 7.12. The Landlord did not consent to the amendment as they advised they had not provided evidence to deal with those notices. As both parties did not consent, I decline to amend the application at the time of the hearing to deal with the 2 notices served in October 2024.

- Severed

The following issues are dismissed with leave to reapply:

- 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 make repairs to the rental unit under sections 32 and 62 of the Act
- An order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

*Residential Tenancy Branch Rules of Procedure*, Rule 6.2, states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy for Cause and the Notice to End Tenancy for Unpaid Rent, I am exercising my discretion to dismiss these issues identified in the application with leave to reapply as these matters are not significantly related. Leave to reapply is not an extension of any applicable time limit.

### **Issues to be Decided**

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

Are the Tenants entitled to more time to cancel the 10 Day Notice?

Should the Landlord's One Month Notice be cancelled?

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 Tenants?

Are the Tenants entitled to recover the filing fee for this application from the Landlord?

### **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 August 1, 2024, with a monthly rent of \$2,200.00, due on the first day of the month, with a security deposit in the amount of \$1,100.00. The Tenants advised they did not move into the rental unit until August 19, 2024.

The Landlord served a 10 Day Notice for Unpaid rent on September 17, 2024 for \$700.00 (10 Day Notice). The Landlord also served a One Month Notice for Cause on September 25, 2024 and the cause was the Tenants breached a material term that was not corrected after written notice (the One Month Notice).

The Tenants are disputing the 10 Day Notice, the One Month Notice and applied for more time to dispute the 10 Day Notice. The Tenants filed their application on September 26, 2024. The Landlord filed a cross application seeking an Order of Possession and Monetary Order based on the 10 Day Notice.

## **10 Day Notice**

The Landlord's position is that the Tenants did not pay \$700.00 towards August 2024 rent and the Landlord issued the 10 Day Notice. The Landlord advised the Tenants paid \$500.00 on October 2, 2024, and provided a copy of the e-transfer e-mail. The Landlord argued they originally agreed to deduct \$200.00 from rent because the Tenants requested additional cleaning, and the Landlord offered to hire a professional cleaner but Tenant K.O.C.H. offered to do it. The Landlord argued they originally offered Tenant K.O.C.H. \$200.00 to do the cleaning but then the Tenants made additional requests in September 2024 for the Landlord to hire a professional cleaner. The Landlord argued if the \$200.00 deducted did not settle the cleaning issue, then the Tenants owe the \$200.00. The Landlord also provided text messages regarding the cleaning arrangement. The Landlord provided evidence of a letter dated September 27, 2024, sent to the Tenants, advising the \$200.00 deduction was no longer accepted by the Landlord. The Landlord is also seeking \$50.00 late fee as stated in section 2 of the addendum.

The Landlord advised the Tenants paid rent for September and October 2024 and were issued receipts for use and occupancy only. A copy of the receipts was provided as evidence.

The Tenants argued they were late disputing the 10 Day Notice because Tenant A.M.W.G suffered a seizure. The Tenants were unable to provide the date the seizure occurred but argued it was during the period the notice was given. The Tenants' position is that there was delay in paying the remainder of August 2024 rent because the Landlord requested the Tenants pay a portion of rent by e-transfer and a portion of rent by cash, which the Tenants did not feel comfortable with. The Tenants argued they e-transferred \$500.00 on September 26, 2024. The Tenants argued they did not pay the \$200.00 as the Landlord offered to deduct \$200.00 for Tenant K.O.C.H. doing the cleaning.

## **One Month Notice**

The Landlord's position is that term 7 of the addendum to the tenancy agreement requires the Tenants to provide proof of insurance within 20 days of the Tenants getting possession of the rental unit. The Landlord argued the Tenants were given a reminder via text message on September 12, 2024, and then a letter September 17, 2024, advising the Tenants were breaching a material term and requesting the Tenants obtain insurance by September 20, 2024. Copies of the letter and text message were provided by the Landlord. The Landlord advised the Tenants did not provide proof of insurance by September 20, 2024, and the One Month Notice was issued. The Landlord argued the Tenants only provided proof of insurance on October 1, 2024.

The Tenants' position is that the requirement to get insurance slipped their mind because of the issues they were dealing with in the rental unit but as of October 1, 2024, they obtained insurance.

## **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 Tenants were served the 10 Day Notice on September 17, 2024, and based on section 90 of the Act are deemed served 3 days after the 10 Day Notice was taped to the door. The Tenants had until September 25, 2024, 5 days after the 10 Day Notice was deemed received, to dispute it.

In this case the Tenants disputed the 10 Day Notice and requested more time to cancel the 10 Day Notice on September 26, 2024. Section 66 of the Act provides that the director may extend the time limit established by the Act only in exceptional circumstances.

Policy Guideline 36 describes exceptional circumstances as follows:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The Tenants argued Tenant A.M.W.G suffered a seizure which resulted in the delay. However, the Tenants could not provide the date that the seizure occurred and provided no evidence to support their claim. Given the lack of evidence and that no specific date could be provided, I find that there is insufficient evidence to find the Tenants had an exceptional circumstance that warrants extending the time limit. As such, I decline to grant the extension for more time to dispute the 10 Day Notice.

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

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.

I find that the Tenants did owe unpaid rent for August 2024 which was listed on the 10 Day Notice. While the Tenants paid \$500.00, this was paid after the 5-day deadline and does not cancel the 10 Day Notice.

### **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.

I find that the Tenants did pay \$500.00 towards the \$700.00 listed on the 10-Day Notice; however, as stated above the Tenants paid this after the 5-day deadline. The Landlord is seeking the remaining \$200.00 and the \$50.00 late fee.

Based on the evidence and testimony of both parties, I find that the parties had an agreement that instead of the Landlord hiring a professional cleaner Tenant K.O.C.H. agreed to do the additional cleaning for a onetime \$200.00 reduction in rent. However, the evidence also supports that the Tenants began requesting the Landlord still hire a professional cleaner as the Tenants argued the rental unit required more cleaning than Tenant K.O.C.H. could be expected to do. As such, I find that the \$200.00 rent reduction was voided when the Tenants decided they still wanted a professional cleaner to clean the rental unit. This is also supported by the letter sent to the Tenants on September 27, 2024. Therefore, I find that the Tenants owe \$200.00 for August 2024 rent.

Section 7(1)(d) of the Residential Tenancy Regulation allows an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. Parties may not contract out of the Act or regulations and any attempts to contract out are of no effect, as stated in section 5 of the Act. The addendum of the tenancy agreement authorizes a \$50.00 late payment fee. Based on

the above, I find that the \$50.00 late payment fee is more than allowed under the Regulation and is not enforceable. As such, I decline to award the \$50.00 late fee.

The Landlord's monetary worksheet included utilities; however, the 10 Day Notice did not state any utilities. As such, I decline to award the utilities.

Based on the above, I decline to award any Monetary Order for the additional utilities sought and the \$50.00 late fee.

I grant the Landlord a Monetary Order for \$200.00 under section 55(1.1) of the Act.

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

As I have found the tenancy ended based on the 10 Day Notice it is not necessary to consider the One Month Notice.

**Is the Landlord or the Tenants entitled to recover the filing fee for this application from the other party?**

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.

As the Tenants were not successful in their application, the Tenants' application for authorization to recover the filing fee from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

**Conclusion**

I grant an Order of Possession to the Landlord **effective by 1:00 PM on November 30, 2024, after service of this Order on the Tenants**. Should the Tenants 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 **\$300.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent and/or utilities under section 55(1.1) of the Act	\$200.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$300.00</b>

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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 Tenants' application in its entirety 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 28, 2024

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Residential Tenancy Branch