



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act). The Tenant's application for:

- Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under section 46 of the Act
- Reimbursement of the filing fee

And the Landlords' application for:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent under section 46 of the Act
- A Monetary Order for unpaid rent
- Reimbursement of the filing fee

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

Preliminary Matters – Amendment

At the hearing the Landlord sought to further amend their application to include a claim for increased rent which Agent AW testified remains outstanding.

Rule of Procedure 7.12 states:

7.12 Amending an application at the hearing

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.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the Landlord is seeking compensation for unpaid rent that has increased since they first applied for dispute resolution, I find that the increase in the Landlord's claim should have been reasonably anticipated by the Tenant. Therefore, pursuant to Rule 7.12, I order that the Landlord's application to be amended to include a claim for the unpaid rent due on November 1, 2024 (\$1713.00).

Issue(s) 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 the filing fee?
- Is the Tenant entitled to recover the filing fee?

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.

Both parties agreed that this tenancy began on August 1, 2021. The monthly rent of \$1,713.00 is due on the first day of each month. On July 21, 2021, the Tenant paid a security deposit in the amount of \$800.00, which the Landlord continues to hold in trust.

On October 2, 2024, the Landlord served in person to the Tenant the 10 Day Notice. The 10 Day Notice was submitted in evidence. The 10 Day Notice dated October 2, 2024, has the effective date of October 12, 2024. The 10 Day Notice indicates failure to pay rent of \$1,713.00 due on October 1, 2024.

AW testified that the Tenant failed to pay rent due on October 1, 2024, and November 1 (\$1,713.00 per month x 2 months). AW testified that previous payments were made by way of posted dated cheques. AW testified that the Tenant failed to pay rent and failed to communicate with them. Building Manager DD testified that they have reviewed the

tenant ledger account and their records show unpaid rent due on October 1, 2024, and November 1.

The Tenant testified that they injured their back and are dealing with a WorkSafe BC claim. The Tenant testified that they informed AW and the DD of this issue. The Tenant testified that on October 15, 2024, they received some payment from WorkSafe BC and they offered to pay outstanding rent due on October 1, 2024. The Tenant testified that AW and DD did not accept their offer. The Tenant admitted that they did not pay rent due on November 1, 2024.

AW testified that on October 17, 2024, after they had served the Tenant with their application for dispute resolution, the Tenant discussed possible payment. AW stated that they decided to wait for this hearing, and since that time the Tenant failed to pay rent due on November 1, 2024.

Analysis

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

Under the Act the Tenant may dispute the 10 Day Notice for specific reasons, such as they have proof that their rent was paid or that the Tenant had the right under the Act to deduct all or a portion from their rent.

Although the Tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the Tenant's application had no merit as the Tenant failed to provide evidence of paying rent. I find the offer of payment was made by the Tenant was not within five days of them receiving the 10 Day Notice from the Landlord.

I find the Tenant breached section 26 of the Act when they failed to pay rent. Further the Tenant provided no lawful reason to withhold rent. Therefore, I dismiss the Tenant's application 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 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. As noted earlier in this decision, I find the 10 Day Notice complies with section 52 of the Act.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$3,426.00 (\$1,713.00 per month x 2 months, for October 2024 and November). The \$800.00 security deposit has accrued \$34.26 in interest, I order the Landlord to retain the security deposit plus interest in the amount of \$834.26 in partial satisfaction of the unpaid rent.

Is the Landlord entitled to recover the filing fee?

As the Landlord was successful in their application, I grant the Landlord the \$100.00 filing fee paid for this application under section 72 of the Act.

Is the Tenant entitled to recover the filing fee?

As the Tenant was not successful in their application, I find that the Tenant is not 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 seven (7) days after service of this Order on the Tenant**. 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 **\$2,691.74** under the following terms:

Monetary Issue	Granted Amount
A Monetary Order for unpaid rent under section 55 of the Act	\$3,426.00
Minus security deposit plus interest	-\$834.26
To recover the cost of the filing fee	\$100.000
Total Amount	\$2,691.71

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order**. Should the Tenants fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court)

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: November 7, 2024

Residential Tenancy Branch