

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

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) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

LI attended for the Landlord.

No one attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenants did not attend the hearing.

The Landlord explained that on October 17, 2024, he served the Tenants with the Proceeding Package by attaching it to the door and placing it in their mail slot. He provided photos in support of this.

Section 89 (2) of the Act permits a Landlord's notice of dispute application for an order of possession to be served by attaching a copy of it to the Tenant's door, or other conspicuous place at the address at which the tenant resides.

I find that the Tenants were served with notice of the dispute resolution proceeding in accordance with section 89(2) of the Act.

The Landlord agreed that he received a copy of the Tenant's notice of the dispute resolution proceeding by way of registered mail. I find that the Landlord was served with notice of the dispute resolution proceeding in accordance with section 89(1) of the Act.

Service of Evidence

The Landlord indicated that he was not served with any evidence by the Tenants. The only evidence provided by the Tenants to the Residential Tenancy Branch was a copy of the 10 Day Notice to End Tenancy that they received from the Landlord.

The Tenants provided no evidence of having served the Landlord with evidence. I find that the Tenant's evidence was not served to the Landlord in accordance with section 88 of the Act.

The Landlord provided evidence to the Residential Tenancy Branch. The Landlord said that he served the Tenants with his evidence, and that this was included with the Proceeding Package that was attached to their door and placed in their mail slot.

I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act.

Preliminary Matters

Attendance

The Tenants did not attend 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 pursuant to Rule of Procedure 7.3.

I conducted the dispute resolution hearing in the absence of the Tenants. I decided to proceed with the hearing having already determined the Tenant was served with the Landlord's notice of dispute resolution hearing and evidence.

Rent Claim Amendment

At the outset of the hearing the Landlord sought to increase their monetary claim to reflect the Tenants' failure to pay rent for the month of October following the issuance of the 10 Day Notice.

Residential Tenancy Branch Rule of Procedure 4.2, states that in circumstances that can reasonably be anticipated, 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 first issued the 10 Day Notice.

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

Is the Landlord entitled to an Order of Possession based on the Landlord's request for an early end to the tenancy?

Is the Tenant entitled to recover the filing fee for this application from the Tenant?

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 a monthly rent of \$3,500.00, due on the first day of the month, with a security deposit in the amount of \$1,750.00. In support of this, the Landlord provided a copy of a tenancy agreement dated October 1, 2021, that is signed by the Landlord but not the Tenants.

The Landlord said that on September 19, 2024, he attached one copy of a 10 Day Notice to End Tenancy to the Tenants' door and placed another in the Tenants' mail slot.

Although the Tenants did not attend the hearing, on the details of their application for dispute resolution the Tenants indicated that the delivery date of the 10 Day Notice was September 23, 2024.

On the 10 Day Notice, the Landlord indicated that the Tenants owed rent in the amount of \$20,300.00, and that this was due September 1, 2024.

At the hearing, the Landlord explained that these arrears had been accruing in varying amounts incrementally since January 1, 2022. The Landlord provided a spreadsheet which indicated the amount of rent received from the Tenants since January 2022, and on which dates. He said that all of the payments were received by way of e-transfer with the exception of two, which were by cheque. These two payments are identified as such in the spreadsheet.

The Landlord said that the Tenants had subsequently failed to pay rent for the month of October.

The Landlord said that he had originally planned to develop the property and was content to receive less than the full amount of the rent as this was more convenient than trying to find new tenants. He said that his plans changed however, and he sold the property to a purchaser who will take possession of the property on December 1, 2024.

Further to this, and directions received from the purchaser, the Landlord served the Tenants with a Three Month Notice to End Tenancy for Purchaser's Use.

The Landlord said that the Tenants were not required to pay rent for November pursuant to the terms of the Three Month Notice.

Although the Tenants disputed that Notice, the parties entered into a settlement agreement on October 22, 2024, following a Residential Tenancy Branch hearing of the matter, with the Tenants agreeing that the tenancy would end and they would vacate by 1:00pm on December 1, 2024.

Although the Landlord was issued an Order of Possession in relation to the settlement agreement, he said that he was nonetheless concerned that the Tenants would not vacate, that he would be required to take additional action, and that a delay in possession of the property by the purchaser would ensue.

The Tenants disputed the 10 Day Notice on October 11, 2024.

Analysis

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

Residential Tenancy Branch Rule of Procedure 7.3 provides that if a party or their agent fails to attend the hearing, the arbitrator may dismiss the application, with or without leave to re-apply.

As the Tenants did not attend the hearing, their application for more time to cancel the Landlord's 10 Day Notice is dismissed without leave to re-apply.

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 deem the 10 Day Notice to have been served to the Tenants on September 22, 2024, three days after it was attached to the Tenants' door on September 19, 2024. The Tenants had until September 27, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The Tenants disputed the Notice on October 11, 2024.

Based on the evidence before me, I find the Tenants failed to dispute the 10 Day Notice or pay rent within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the Act, due to the failure of the Tenants to take either of these actions within five days, I find the Tenants are conclusively presumed to have accepted the end of this tenancy on October 2, 2024, the effective date on the 10 Day Notice. In this case, the Tenants and anyone on the premises were required to vacate the premises by October 2, 2024.

Therefore, I find that the Landlord is entitled to 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.

For the above reasons, the Tenant's application 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 is dismissed, without leave to reapply.

Is the Landlord entitled to an Order of Possession based on the Landlord's request for an early end to the 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 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.

As previously indicated, the Tenants did not attend or provide any evidence in support of their application to cancel the 10 Day Notice for unpaid rent.

The Tenants' application for dispute resolution does not indicate that they are disputing the Landlord's claim that they owe rent.

Having reviewed the calculations in the rental arrears spreadsheet, which were not disputed, and accepting that the Tenants did not pay rent for the month of October, I find the Landlord is owed rent in the amount of \$23,800.00. I find therefore that the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$23,800.00.

The Landlord continues to hold the Tenant's security deposit of \$1,750.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain the Tenants' security deposit in partial satisfaction of the monetary order.

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

As the Tenants were not successful in their application, the Tenants' application for authorization to recover the filing fee for this application 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 22, 2024, after service of this Order on the Tenants**. Should the Tenant(s) 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 **\$22,050.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$23,800.00
Security Deposit	-\$1,750.00
Total Amount	\$22,050.00

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) 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.

The Tenant's application for more time to cancel the Landlord's 10 Day Notice is dismissed without leave to re-apply.

The Tenant's application 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 is dismissed, without leave to reapply.

The Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 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: November 8, 2024