

DECISION

Introduction

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

This hearing also dealt with the Landlord's Application for Dispute Resolution under the Act for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for unpaid rent
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord attended the hearing for the Landlord.

The Tenant attended the hearing for the Tenant.

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

The Landlord testified that he served the Tenant with the Proceeding Package and supporting evidence via registered mail on October 24, 2024. A Canada Post registered mail receipt for same was entered into evidence. The Tenant testified that he received the Landlord's Proceeding Package and evidence via registered mail on October 29, 2024. I find that the Tenant was served with the Proceeding Package and evidence in accordance with sections 88 and 89 of the Act.

The Tenant testified that he served the Landlord with the Proceeding Package and supporting evidence via registered mail on October 18, 2024. A Canada Post registered mail receipt for same was entered into evidence. The Landlord testified that he received the Tenant's Proceeding Package and evidence via registered mail. I find that the Landlord was served with the Proceeding Package and evidence in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to recover the \$100.00 filing fee from the Tenant?

Is the Tenant entitled to more time to dispute the 10 Day Notice?

Is the Tenant entitled to deduct all or a portion of rent?

Is the Tenant entitled to the cancellation of the 10 Day Notice?

Is the Tenant entitled to recover the \$100.00 filing fee 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 September 1, 2023 with a monthly rent of \$4,200.00, due on first day of the month, with a security deposit in the amount of \$4,200.00. The Tenant testified that he provided the security deposit to the Landlord on August 16, 2023. The Landlord testified that the date provided by the Tenant sounds correct.

Both parties agree that the Landlord personally served the Tenant with the 10 Day Notice on October 6, 2024. The Tenant filed to dispute the Notice on October 17, 2024. The Tenant testified that he did not dispute the 10 Day Notice within 5 days of receiving it because he and his kids had a cold and because he was authorized to withhold rent for work completed on the property.

The 10 Day Notice was entered into evidence, is signed by the Landlord, is dated October 6, 2024, gives the address of the rental unit, states that the effective date of the notice is October 20, 2024, is in the approved form, #RTB-30, and states that the Tenant failed to pay rent of \$4,200.00 due on October 1, 2024.

Both parties agree that at the start of the tenancy there was a tarp on the roof of the rental property. The Landlord testified that the tarp prevented water from leaking into the rental property. The Landlord testified that he planned on demolishing the rental property in the spring of 2025 and so did not want to spend money on a new roof. A demolition permit for the rental property dated August 10, 2022 was entered into evidence. The Landlord testified that he informed the Tenant of this when the Tenant first viewed the rental property.

The Tenant testified that when the tenancy agreement was signed, he and the Landlord verbally agreed that the Tenant would “take care of the roof”. The Tenant testified that he understood that this meant that he would provide the materials and the labour to replace the roof and that the cost of his labour and the materials would be deducted over a period of time for his rent. The Tenant testified that the specifics of how much were permitted to be deducted from rent were never discussed. The Tenant testified that he presumed the Landlord knew that money for the work completed would be deducted from rent.

The Landlord testified that the Tenant agreed that he would replace the roof at his own expense. The Landlord testified that he never agreed to allow the Tenant to deduct anything from the rent.

The only documentary evidence pertaining to the roofing agreement entered into evidence was an email exchange between the Tenant and the Landlord dated April 29, 2024. The Tenant’s email to the Landlord states:

As previously stated, the roof will need to be replaced at [the rental property].
I will be providing labor and materials.
I will be starting the replacement work next week as the tarp is not holding up.
Work will include teardown of the old and disposal.
Plywood and underlayment will be installed before the new asphalt shingles.
Aluminum fascia will also be installed and gutters.
I will have a boom lift onsite to perform the work.

Please acknowledge that all owners are aware of this by replying to this email.

The Landlord’s responding e-mail states:

Thank you for the update. You are okay to go ahead with the replacement.

The Tenant testified that after the above emails, he did not have any further conversations with the Landlord about the roof or rent deductions for work completed before he withheld rent for October and November 2024. The Tenant testified that the roof was completed in the summer of 2024. The Tenant testified that he has not provided the Landlord with a written account of the roof repairs or receipts for claimed amounts.

The Landlord testified that the Tenant has not provided any accounting of amounts claimed either in writing or verbally. The Landlord testified that the roof with the tarp on it did not leak and that the Tenant never informed him that it leaked. The Landlord testified that the Tenant asked to replace the roof at his own cost, and he let him.

Analysis

Is the Tenant entitled to an extension for filing to dispute the 10 Day Notice?

Section 66 of the *Act* states that an arbitrator may extend a time limit established by this Act only in exceptional circumstances. 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 Tenant testified that he and his family had a cold when the 10 Day Notice was served. No medical evidence to support this testimony was provided. I am not satisfied that the Tenant has proved, on a balance of probabilities that he and his family had a cold when the 10 Day Notice was served. I am also not satisfied that the common cold would have prevented the Tenant from filing to dispute the 10 Day Notice within 5 days of receiving it. I find that having a cold is not an exceptional circumstance.

In accordance with my above findings and section 66 of the Act, I decline to extend the time limit to file to cancel the 10 Day Notice.

Is the Tenant entitled to deduct all or a portion of rent?

Section 26(1) of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulation or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act. Section 33(7) of the Act states that if a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Section 33(1)(c)(i) of the Act defines emergency repairs as repairs made for the purpose of repairing major leaks in the roof. Section 33(5) of the Act states that a landlord must reimburse a tenant for amount paid for emergency repairs if the tenant:

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Both parties agreed that the Tenant did not provide the Landlord with a written account of the roof repairs or receipts for amounts claimed. The Tenant was therefore not permitted to withhold rent or deduct any amount from rent under section 33(5) of the Act. I find that the Tenant has not proved that the Landlord ever agreed to deduct any amount from rent or that the Tenant was otherwise permitted under the Act to withhold October and November rent from the Landlord.

I find that the April 29, 2024 emails show that the Tenant agreed to complete the roof work at the rental property with the Landlord's permission but do not authorize any amount to be deducted from rent.

I note that section 19(1) of the Act states that a security deposit cannot be more than $\frac{1}{2}$ of the rent and section 19(2) of the Act states that if the landlord accepts a security deposit equal to more than $\frac{1}{2}$ of the security deposit, the tenant may deduct the overpayment from rent. The Tenant did not argue that he withheld rent because the Landlord overcharged him on the security deposit. I note that had this been argued, the Tenant would not have been permitted to deduct the entire security deposit from rent, only the overpayment, which amounts to $\frac{1}{2}$ months rent. As no rent was paid for October 2024, the 10 Day Notice would be upheld because the Tenant did not pay the remaining half of rent or file to dispute the 10 Day Notice within 5 days of its receipt.

I find that the Tenant has not proved that he had any authority under the Act, tenancy agreement or Regulation to withhold October and November 2024 rent.

**Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?
Is the Tenant entitled to cancellation of the 10 Day Notice?**

Based on the undisputed testimony of parties, I find that the Tenant was personally served with the 10 Day Notice on October 6, 2024. Upon review of the 10 Day Notice I find that it meets the form and content requirements of section 52 of the Act.

Based on the testimony of both parties, I find that the tenant failed to pay October 2024s rent within five days of receiving the 10 Day Notice. The Tenant did not make application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the Tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and was required to vacate the rental unit by October 20, 2024.

As the Tenant did not vacate the rental property by October 20, 2024, I find that the Landlord is entitled to a 2-day Order of Possession. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit within the 2 days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

The 10 Day Notice is upheld and the Tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 55(1.1) of the Act states that if the 10 Day Notice complies with section 52 of the Act and the 10 Day Notice is upheld the director must grant an order requiring the payment of the unpaid rent.

Section 26(1) of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act. As I have previously stated, the Tenant did not prove that they had authority to deduct or withhold all of October's rent, I find that the Tenant breached section 26(1) of the Act by not paying October 2024's rent in full.

Pursuant to section 26(1) of the *Act*, I find that the Tenant was obligated to pay the monthly rent in the amount of \$4,200.00 on the first day of each month. Based on the testimony of both parties, I find that the Tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the Landlord \$4,200.00 in unpaid rent.

If the landlord suffers further loss due to the Tenant overholding, the Landlord is at liberty to file an application for dispute resolution seeking additional damages for overholding.

Is the Tenant entitled to recover the \$100.00 filing fee from the Landlord?

As the Tenant was not successful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the Landlord, pursuant to section 72 of the *Act*.

Is the Landlord entitled to recover the \$100.00 filing fee from the Tenant?

As the Landlord was successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the Tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the Landlord is entitled to retain the Tenant's security deposit in the amount of \$4,200.00 and \$100.00 of the interest accrued on the security deposit. I find that the interest on the security deposit amounts to \$130.17. The dates used to determine the accrued interest are August 16, 2024, the date the security deposit was received by the Landlord, and November 13, 2024, the date of this Decision. The Landlord must re-pay the remaining interest in the amount of \$30.17 to the Tenant.

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.

The Landlord is permitted to retain the security deposit of \$4,200.00 and \$100.00 of the accrued interest on the security deposit.

I grant the Tenant a Monetary Order in the amount of **\$30.17** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$4,200.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
authorization to retain the Tenant's security deposit and accrued interest under section 72 of the Act	-\$4,330.17
Total Amount	-\$30.17

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

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 13, 2024

Residential Tenancy Branch