

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) under sections 46 and 55 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 *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

Tenant S.L. attended the hearing for the Tenant.

L.M. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant was served with the Landlord's Proceeding Package in accordance with section 89(1) of the Act.

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Service of Evidence

Based on the parties' submissions and the evidence before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

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Preliminary Matters

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 and an additional storage fee for the month of November, as well as an additional late fee while awaiting this hearing.

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 Landlord entitled to a Monetary Order for unpaid rent?

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

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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 the parties entered into a written tenancy agreement with a monthly rent of \$3,723.00, due on the first day of the month, a security deposit in the amount of \$1,861.50, and a pet damage deposit in the amount of \$1,861.50.

The Landlord said that on October 4, 2024, they left a 10 Day Notice to End Tenancy for Unpaid Rent in the Tenant's mailbox. In it, the Landlord claimed that they were owed rent for the months of August, September, and October. They also claimed a \$25.00 late fee with respect to each month. They also claimed a \$30.00 storage fee for each month that they had said had not been paid.

The Tenant said that he had been out of the country and did not become aware of the Notice until October 8, 2024.

The Tenant disputed the Notice on October 11, 2024.

At the hearing, the Landlord also claimed rent for November, another \$25.00 late fee, as well as an additional \$30.00 storage fee.

At the hearing, the Tenant agreed that he owed each of the amounts claimed by the Landlord.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim.

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 find the 10 Day Notice to have been served to the Tenant on October 8, 2024. In reaching this conclusion, I accept the Tenant's testimony that he had been out of the country and did not become aware of the Notice until this date. The Tenant therefore had until October 13, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears.

As the Tenant disputed the Notice on October 11, 2024, I find that the Tenant applied to dispute the 10 Day Notice within the time frame allowed by section 49 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the 10 Day Notice.

The Tenant admitted that they had not paid the rent claimed on the Notice within five days of receiving the 10 Day Notice, or at any time since. The Tenant also agreed that they owed storage fees and late fees as claimed by the Landlord. In accordance with section 46(5) of the Act, due to the failure of the Tenant to pay their rent arrears within five days, I find the Tenants are conclusively presumed to have accepted the end of this tenancy on October 18, 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 18, 2024.

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 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 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 Tenant agreed that they owe the unpaid rent, storage fees, and late fees claimed by the Landlord.

I find the Landlord is owed rent in the amount of \$14,892.00 (\$3,723.00 x 4), late fees in the amount of \$100.00 (\$25.00 x 4), and storage fees in the amount of \$120.00 (\$30.00 x 4). I find therefore that the Landlord is entitled to a Monetary Order in the amount of \$15,112.00.

The Landlord continues to hold the Tenant's a security deposit in the amount of \$1,861.50, and a pet damage deposit in the amount of \$1,861.50. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain the Tenants' security deposit and pet damage deposit in partial satisfaction of the monetary order.

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.

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

As the Tenant was not successful in this application, 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.

Conclusion

I grant an Order of Possession to the Landlord **effective by 1:00 PM on December 15, 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 **\$11,489.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$15,112.00
Security Deposit	-\$1,861.50
Pet Damage Deposit	-\$1,861.50
Filing fee	\$100.00
Total Amount	\$11,489.00

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 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.

The Landlord's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is granted.

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 18, 2024

Residential Tenancy Branch