

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 under section 67 of the Act
- Authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also 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
- 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 Landlord was served on November 5, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. A copy of the Canada Post tracking number was provided.

I find that the Tenant was served on November 4, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Canada Post tracking number was provided. The Tenant did not attend the hearing, but the Canada Post tracking number shows it was delivered and the Tenant filed their own application which was crossed with the Landlord's application. As such, I find that the Tenant was aware of the hearing.

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.

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

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 Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

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

Is the Tenant entitled to an order for the Landlord to comply with the Act, Regulation and/or the tenancy agreement?

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

Preliminary Matters

At the outset of the hearing the Landlord sought to increase their monetary claim from \$850.00 to \$2,350.00 to reflect the Tenant's failure to pay \$1,500.00 in monthly rent for November 2024 the additional month of unpaid rent waiting for this hearing.

Residential Tenancy Branch Rules of Procedure, Rule 4.2, states that 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. I allow the amendment as this was clearly rent that the Tenant would have known about and resulted since the Landlord submitted the application.

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 June 1, 2024 with a monthly rent of \$1,500.00 and with a security deposit in the amount of \$750.00.

The Tenant is disputing a 10 Day Notice for Unpaid Rent for \$1,500.00 dated October 23, 2024 (the 10 Day Notice). The Tenant also applied for the Landlord to comply with the Act, Regulation and/or tenancy agreement. The Landlord has applied for a Monetary Order for unpaid rent and an Order of Possession based on the 10 Day Notice and requested to retain the security deposit.

The undisputed testimony of the Landlord is that the Tenant did not pay rent for October 2024 and the 10 Day Notice was issued. The Landlord advised the Tenant made a partial payment by e-transfer of \$650.00 on October 28, 2024. The Landlord provided a copy of the e-transfer e-mail. The Landlord advised the remaining balance of October 2024 rent was not paid and November 2024 rent was not paid. The Landlord is seeking a Monetary Order of \$2,350.00.

While the Tenant did not attend the hearing they did provide evidence of an e-transfer confirmation which shows the Landlord received \$650.00 on October 28, 2024, and \$750.00 on November 1, 2024. Additionally, the Tenant provided a copy of a previous RTB decision which authorized the Tenant to deduct \$100.00 from one future rent payment.

Analysis

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 that the 10 Day Notice was duly served to the Tenant on October 23, 2024, and that the Tenant had until October 28, 2024, to dispute the 10 Day Notice or to pay the full amount of arrears. The Tenant disputed the 10 Day Notice on October 27, 2024, which is within the timeframe required.

Rule of Procedure 7.3 states that if a party or their agent does not attend the hearing, the arbitrator may conduct the hearing in the party's absence or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the Tenant I order the application dismissed without leave to reapply.

Additionally, based on the undisputed testimony of the Landlord and the evidence, I find that the 10 Day Notice was issued for the valid reason of unpaid rent for October 2024.

For the above reasons, the Tenant's application for cancellation of the 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 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.

The undisputed evidence of the Landlord is that the Tenant owed \$1,500.00 in unpaid rent when the 10 Day Notice was issued. I find that the Tenant continued to occupy the rental unit after the 10 Day Notice was served and did not pay rent for November 2024. Based on the undisputed testimony of the Landlord, I find that the Tenant paid \$650.00 on October 28, 2024.

Additionally, the Tenant's evidence shows a second e-transfer sent on November 1, 2024, for \$750.00 and a previous RTB authorization to deduct \$100.00 from a future rent payment. I find that the Tenant paid the unpaid rent for October 2024; however, it was paid after the 5-day deadline and does not cancel the 10 Day Notice.

Based on the above, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$1,500.00 for November 2024 unpaid rent.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security deposit of \$750.00, in partial satisfaction of the monetary award.

Is the Tenant entitled to an order requiring the Landlords to comply with the Act, regulation or tenancy agreement?

Given that the Tenant did not attend the hearing and since I have found that the tenancy ended based on the 10 Day Notice, the Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act is dismissed, without leave to reapply.

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

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 Landlords under section 72 of the Act is dismissed, without leave to reapply.

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.

Conclusion

I grant an Order of Possession to the Landlord **effective November 30, 2024 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.

I grant the Landlord a Monetary Order in the amount of **\$850.00** under the following terms:

| Monetary Issue | Granted Amount |
|---|-----------------|
| a Monetary Order for unpaid rent and/or utilities under section 67 of the Act | \$1,500.00 |
| authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act | -\$750.00 |
| authorization to recover the filing fee for this application from the Tenant under section 72 of the Act | \$100.00 |
| Total Amount | \$850.00 |

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 Landlord is authorized to keep the Tenant's security deposit as partial satisfaction for the amount owed.

The Tenant's application is dismissed in its entirety, 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 20, 2024

Residential Tenancy Branch