

## **DECISION**

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant applied 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 for the landlord to provide services or facilities required by law under section 27 of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- an order allowing the Tenant to assign or sublet because the Landlord's permission has been unreasonably withheld under sections 28 and 58 of the Act

The Landlord applied for:

- an Order of Possession based on the 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

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

The Landlord stated that the Tenant did not serve their application on the Landlord. The Tenant stated that they gave their Proceeding Package to the Landlord's mother who resides on the upper floor of the rental unit. The Landlord stated that they do not reside with their mother. I find the Landlord was not served with the Tenant's Proceeding Package in accordance with section 89(1) of the Act.

The Tenant confirmed receipt of the Landlord's application. Therefore, I find the Landlord's application properly served on the Tenant using my authority under section 71(2) of the Act.

### **Service of Evidence**

The Landlord stated that they were not served with any evidence. The Tenant stated that they gave their evidence to the Landlord's mother. I find that the Tenant did not serve the Landlord with any evidence in accordance with section 88 of the Act.

The Tenant confirmed receipt of the Landlord's evidence. Therefore, I find the Landlord's evidence properly served on the Tenant using my authority under section 71(2) of the Act.

## **Preliminary Matters**

### Claim Increase

At the outset of the hearing, the Landlord sought to increase their monetary claim from \$900.00 to \$1,800.00 to reflect the total amount of rent arrears.

*Residential Tenancy Branch Rules of Procedure*, Rule 7.12, 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.

### Dismissal of Tenant's Application

Policy Guideline #12 states that failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position.

I find the Tenant has not served the Landlord with the application for dispute resolution.

Accordingly, I dismiss the Tenant's Application in its entirety.

## **Issues to be Decided**

Is the Landlord entitled to an Order of Possession for unpaid rent?

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

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

## **Background and Evidence**

I have reviewed the Landlord's evidence and 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 February 17, 2024, with a monthly rent of \$900.00, due on the 16<sup>th</sup> day of the month, with a security deposit in the amount of \$450.00.

The Landlord advised that he served the 10 Day Notice on the Tenant on October 27, 2024 in person. The Tenant acknowledged receiving the 10 Day Notice on October 27, 2024.

A copy of the 10 Day Notice was put into evidence by the Landlord. In it, it indicates that the Tenant failed to pay \$900.00 in rent on October 17, 2024 and identifies November 3, 2024 as its effective date.

The Tenant disputed the 10 Day Notice on November 1, 2024, claiming that they did not pay their rent because the Landlord turned off the heat. The Tenant stated that they withheld the rent since October 16, 2024 because the Landlord had the obligation to provide heat.

Both parties confirmed that the Tenant continues to occupy the rental unit.

The Landlord is seeking an order of possession and a monetary order in the amount of \$1,800.00 for the unpaid rent of since October 16, 2024.

## **Analysis**

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

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).

Based on the testimony of the parties, I find that the 10 Day Notice was served in person in accordance with section 88(a) of the Act. I further find that the Tenant received the 10 Day Notice on October 27, 2024 as confirmed by them at the hearing.

Section 26 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. The Act proscribes a set of limited circumstances in which monies claimed by the Tenant can be deducted

from rent, which include:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by section 19(1), then the amount that was overpaid may be deducted from rent (see section 19(2)).
2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by section 33(5) have been followed (see section 33(8)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see section 43(5)).
4. As ordered by the Director pursuant to sections 65 and 72.

In this instance, none of the above circumstances are applicable here. In reaching this conclusion, I note that while the Tenant did identify that remediation was required in relation to heating issue, they did not claim to have incurred expenses in relation to emergency repairs. The Tenant admits to having failed to pay rent since October 16, 2024.

As per section 46(2) of the Act, all notices issued under section 46 must comply with the form and content requirements set by section 52 of the Act.

I have reviewed the 10 Day Notice and find that it was dated on October 30, 2024. The Landlord stated that it was wrongly dated, and the correct date was October 27, 2024. I find the Notice needed to be amend because there was a typographical error. As such, I amend the Notice to reflect the correct date pursuant to section 68 of the Act.

I also note that the effective date on the 10 Day Notice is November 3, 2024. In accordance with section 53 of the Act, I correct the effective date to November 6, 2024, 10 days after it was received by the Tenant on October 27, 2024. In all other respects, I find the 10 Day Notice complies with form and content in accordance with section 52 of the Act.

As the correct effective date of the Notice has already passed, I find that the Landlord is entitled to an Order of Possession.

I grant the Landlord an order of possession effective within 7 days of receipt by the Tenant.

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

Based on the testimony of the parties, I find the full amount of the rent arrears is currently \$1,800.00, as amended and in accordance with Rule 7.12.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$1,800.00.

The Landlord continues to hold the Tenant a security deposit in the amount of \$450.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain the Tenant's security deposit in partial satisfaction of the monetary order.

I further order the Landlord to retain the interest accrued on the security deposit, which is \$9.49 as of the date of this Decision.

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

As the Landlord was successful in this 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 seven (7) 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.

I grant the Landlord a Monetary Order in the amount of **\$1,440.51** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$1,800.00
<i>Security Deposit plus interest</i>	-\$459.49
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$1,440.51</b>

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 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 28, 2024

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Residential Tenancy Branch