

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

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 E.A. attended the hearing for the Tenant.

C.B. and S.H. 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 by \$1,500.00 to reflect the Tenants' failure to pay rent for the month of November, as well as a \$25.00 late rent 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 Landlord entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

I have reviewed all evidence but will refer only to what I find relevant for my decision.

Evidence was provided showing a monthly rent of \$1,500.00, due on the first day of the month. The Landlord holds a security deposit in the amount of \$750.00.

The Tenant paid rent in the amount of \$250.00 on October 1, 2024.

A 10 Day Notice was sent to the Tenant via a pre-agreed email for service on October 24, 2024, indicating that the Tenant owed rent in the amount of \$1,250.00 for October.

The Tenant disputed this notice on November 2, 2024.

At the hearing, the Tenant confirmed that she had not paid the full rent due for October as indicated in the Notice and that she had also failed to pay rent for November.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish 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(s) do 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).

A 10 Day Notice was sent to the Tenant via a pre-agreed email for service on October 24, 2024. I deem the notice to have been served October 27, 2024, three days later. As the Tenant disputed this notice on November 2, 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 rent and a \$25.00 late fee for November 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 November 7, 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 November 7, 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 and late fee claimed by the Landlord.

I find the Landlord is owed rent in the amount of \$2,750.00 (\$1,250.00 + \$1,500.00), and a late fee in the amount of \$25.00. I find therefore that the Landlord is entitled to a Monetary Order in the amount of \$2,775.00.

The Landlord continues to hold the Tenant's a security deposit in the amount of \$750.00. 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 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 by 1:00 PM on December 5, 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 **\$2,125.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$2,775.00
Security Deposit	-\$750.00
Filing fee	\$100.00
Total Amount	\$2,125.00

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 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 27, 2024

Residential Tenancy Branch