

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's Application (910175358) 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 to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- an order to end the tenancy based on a frustrated tenancy agreement under section 44 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

and with the Landlord's Application (910175916) for Dispute Resolution under 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

and with the Landlord's Repeat Application (919175373) for Dispute Resolution under the Act for:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenants' 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

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

The Tenants sent the Proceeding Package to the Landlords by Registered Mail on November 7, 2024. The Landlords confirm receipt on November 9, 2024. I find that the Landlords were served with the Proceeding Package in accordance with section 89(1) of the Act.

The Landlords served the Proceeding Package to the Tenants in person on November 7, 2024. The Tenants confirmed receipt. I find that the Tenants were served with the Proceeding Package in accordance with section 89(1) of the Act.

## **Service of Evidence**

The Tenants sent evidence to the Landlords by Registered Mail on November 7, 2024. The Landlords confirm receipt on November 9, 2024. I find that the Landlords were served with evidence in accordance with section 88 of the Act.

The Landlords served evidence to the Tenants in person on two dates: November 7, 2024, and November 20, 2024. The Tenants confirmed receipt. I find that the Tenants were served with evidence in accordance with section 88 of the Act.

## **Preliminary Matters**

At the outset of the hearing, the parties agreed that the tenancy had ended effective November 15, 2024. In view of that, the following remedies sought by the Tenant were determined to no longer be relevant and were withdrawn through amendment of the application, with consent of the parties:

- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- an order to end the tenancy based on a frustrated tenancy agreement under section 44 of the Act

Further, the Landlord had made a repeat application and sought to proceed only on the issues in file number 910175373. Therefore, the entirety of issues on file number 910175916 are withdrawn through amendment of the application, with consent of the parties:

- 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

The remaining issues to be decided are identified below.

## **Issues to be Decided**

Should the Landlords' 10 Day Notice be cancelled?

Are the Landlords entitled to a Monetary Order for unpaid rent?

Are the Landlords entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Are the Landlords entitled to retain all or a portion of the Tenants' security and pet damage deposits in partial satisfaction of the monetary award requested?

Are the Tenants entitled to recover the filing fee for this application from the Landlords?

Are the Landlords entitled to recover the filing fee for this application from the Tenants?

## **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.

The parties agree that the tenancy began on March 24, 2024, for a fixed term of one year, ending March 24, 2025. This is documented on the tenancy agreement submitted in evidence.

The tenancy agreement says that monthly rent in the amount of \$2,400.00 is due on the 26<sup>th</sup> day of the month. No explanation was provided as to why the rent was due on the 26<sup>th</sup> day of the month when the term of the tenancy began on the 24<sup>th</sup> day of the month.

The parties agree that effective May 1, 2024, rent would be accepted on the first day of the month, though continued to be for a monthly period beginning on the 24<sup>th</sup> day of the month. This is documented in text messages between the parties dated March 22, 2024.

The parties agree that the tenancy ended on November 15, 2024, the day on which the Tenants vacated the rental unit. The Tenants gave written notice to end the tenancy to the Landlords on October 6, 2024, effective November 15, 2024.

The Tenants failed to pay rent on October 26, 2024, or any day thereafter.

The Landlord issued a 10 Day Notice on November 1, 2024, that says that the Tenants failed to pay rent in the amount of \$2,400.00 due October 26, 2024. They served the 10 Day Notice to the Tenants at the rental unit on November 1, 2024.

The Landlords submit that they were able to re-rent the rental unit effective December 1, 2024, and that they discounted the monthly rent by \$500.00 per month for the first two months as a signing incentive to ensure the unit was re-rented before the snow. The rental unit is located in an area of the province with difficult winters.

The Landlords provided a copy of an email from the Tenants dated October 29, 2024, which proposed discounting the rent to secure a renter, and offered their security deposit to offset the loss.

Evidence submitted by both parties confirms that the Tenants were live to their ongoing financial obligation to the fixed term tenancy until a replacement tenant could be secured.

The Landlords listed the rental unit on Facebook Marketplace on October 6, 2024. They received steady interest in the unit, but few applications were completed by the prospective tenants and many viewings were cancelled. They submitted screenshots of conversations with multiple prospective tenants, as well as conversations with the Tenants that document multiple cancelled showings.

The Tenants listed the rental unit themselves on Kijiji. They hosted a viewing and referred the prospective tenant to the Landlords. The prospective tenant communicated to the Tenants that they would rent the unit effective November 15, 2024.

The prospective tenant ultimately signed a tenancy agreement with the Landlords on November 2, 2024. However, the Landlords said he was less committed in communication with them than he had been with the Tenants. He communicated he was unable to pay rent until December 1, 2024, and that he was considering other units. In view of limited response to the advertisement and the coming snow, the Landlords offered the discount.

The Landlords submitted the new tenancy agreement as evidence which references the \$500.00 per month discount for the first two months, and that it was extended at the request of the previous Tenants.

The monthly rent for the new tenancy is \$2,500.00 per month.

The Landlords seek unpaid rent in the amount of \$2,400.00 as stated on the 10 Day Notice, as well as compensation for loss for the Tenants ending the fixed term tenancy. Specifically, they seek compensation for the \$1000.00 total discount offered to the new tenant, and a per diem rate for October 26, 2024, to December 1, 2024, when the new tenancy agreement began.

The Landlords additionally seek \$25.00 per month as a late fee for seven months of late rent payments. At the hearing the Landlords clarified that the Tenants had paid rent late only four times, on May 2, 2024, July 2, 2024, September 5, 2024, and the amount due November 1, 2024, which was never paid.

The Landlords submit they are entitled to this amount because the Regulations permit a \$25.00 administrative fee for late payment of rent. There is no such term in their tenancy agreement. The tenancy agreement prescribes a \$50.00 per day fee for late payment of rent.

The Tenants submit that they refused to pay rent due November 1, 2024, because they intended to vacate the rental unit on November 15, 2024, and because they believed an alternate tenant had been secured for that date.

The Tenants submit that the Landlords did not take required steps to mitigate their loss because they didn't post the listing on multiple platforms, and that they needlessly offered the \$1,000.00 discount when the tenant was already willing to rent the unit.

The Landlords seek an unspecific amount of compensation for damage to the rental unit, though this was not clearly articulated in their initial application. The damage is attributed to the deck raining and gate and yard maintenance.

## **Analysis**

### **Should the Landlord's 10 Day Notice be cancelled?**

Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with the form and content requirements of section 52 of the Act.

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.

It is undisputed by the parties that the Landlord issued the 10 Day Notice dated November 1, 2024, and that the Tenants received that notice at their rental unit same day. The Tenants applied to dispute the notice on November 3, 2024, within the allowable period under the Act.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement. In this circumstance the Tenants were required to pay rent in full on October 26, 2024, for the rental period of October 26, 2024, to November 25, 2024.

It is not apparent on what basis the Tenants dispute the 10 Day Notice as they admitted both at the hearing and in emails submitted in evidence that they failed to pay rent in

any amount on October 26, 2024, or any day thereafter and that the tenancy did not end until November 15, 2024. The Tenants did not assert a right under the Act to withhold rent.

With respect to the timing of the notice, the tenancy agreement explicitly states that rent is due on the 26<sup>th</sup> day of the month. While the parties had an informal agreement to accept payment on the first day of the month, the tenancy agreement was not amended through written agreement. The Landlords were within their rights to issue the notice on November 1, 2024, especially so when the Tenants had communicated that day a refusal to pay.

For the above reasons, the Tenants' application for cancellation of the Landlords' 10 Day Notice under sections 46 and 55 of the Act is dismissed, without leave to reapply.

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

Based on the evidence before me, I find that the Landlords have established a claim for unpaid rent for the period of October 26, 2024, to November 25, 2024, in the amount of \$2,400.00.

I find that the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$2,400.00.

**Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?**

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

The Landlord seeks compensation for loss of rental income because the Tenants ended the fixed term tenancy early, and for late payment of rent on four occasions. At the hearing the Landlord further sought compensation for damage to the rental unit.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Section 45 of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and the day before the day in the month that rent is payable under the tenancy agreement.

While the Tenant gave notice on October 6, 2024, of their intention to end the tenancy on November 15, 2024, they were not permitted to give notice to end the fixed-term tenancy effective earlier than March 25, 2025. This date is adjusted from the tenancy agreement to align with the day in the month on which rent is due. The Tenants failed to comply with the Act and their tenancy agreement in ending the tenancy early.

The Landlord was entitled to receive from the Tenants total rent in the amount of \$9,600.00 for the period of November 26, 2024, to March 25, 2025.

The Landlord under the new tenancy agreement will receive \$9,000.00 for the same period.

Therefore, the Landlord has established a total loss in the amount of \$600.00.

I find that the Landlords acted reasonably to minimize their loss, by immediately advertising the rental unit upon receipt of the Tenants' written notice, and by offering a \$500.00 per month discount for two months to secure a new tenant before the weather conditions changed.

With respect to the late payment of rent, Regulation 7(2) expressly states that a landlord must not charge a fee for late payment of rent unless the tenancy agreement provides for that fee. The tenancy agreement submitted in evidence does not provide for that fee, and the \$50.00 per day late payment fee that is prescribed in the tenancy agreement is inconsistent with the Regulation and unenforceable per section 6(3) of the Act. The Landlord cannot substitute the unenforceable term with one that is consistent with the Regulations, without written amendment to the tenancy agreement with agreement of both parties.

With respect to damage to the rental unit, Rule 2.2 of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure) says that the claim is limited to what is stated in the application, and Rule 6.2 says that the hearing is limited to matters claimed on the application. Section 59(2) of the Act states that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

I find that the Landlords failed to provide full particulars of the dispute with respect to damage. The Landlords may still file an application for damage to the rental unit, though this is not an extension of any applicable limitation period.

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 money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, in the amount of \$600.00.

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

Section 72(2) of the Act states that if the arbitrator orders a tenant to pay an amount to a landlord, the amount may be deducted from any security deposit due to the tenant.

The Landlord seeks to retain the damage deposit to offset the monetary award.

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security deposit of \$1,200.00, plus interest of \$22.31 (calculated from March 21, 2024, to November 27, 2024, the date of the hearing), in partial satisfaction of the monetary award.

With respect to the pet damage deposit, section 38(7) of the Act says that a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise. I find that the Tenant communicated their agreement in emails dated November 2, and 5, 2024, that the Landlords may retain both the security deposit and pet damage deposit "towards any unpaid rent or shortfalls". Further, no evidence was provided by either party to suggest that a forwarding address had been provided by the Tenants to the Landlords such that they were required to repay the deposit with 15 days, per section 38 of the Act.

For this reason, under section 72 of the Act, I allow the Landlord to retain the Tenants' pet damage deposit of \$1,200.00, plus interest in partial satisfaction of the monetary award. As the pet damage deposit was received in two payments of \$600.00 on different dates, the interest is calculated as follows:

- \$600.00 received May 2, 2024, plus interest of \$9.30 (calculated from May 2, 2024, to November 27, 2024, the date of the hearing)
- \$600.00 received May 16, 2024, plus interest of \$8.86 (calculated from May 16, 2024, to November 27, 2024, the date of the hearing)

The total amount of deposits plus interest to be retained is \$2,440.47.

**Are the Tenants entitled to recover the filing fee for this application from the Landlords?**

As the Tenants were not successful in this application, the Tenants' application for authorization to recover the filing fee for this application from the Purchasers 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 the Landlord a Monetary Order in the amount of **\$659.53** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for loss of rent under section 67 of the Act	\$2,400.00
a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act	\$600.00
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	-\$2,440.47
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>\$659.53</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).

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: December 5, 2024

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Residential Tenancy Branch