

DECISION

Introduction

The Tenants seek the following the following relief under the *Residential Tenancy Act* (the “*Act*”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy for Unpaid Rent signed November 4, 2024 (the “10 Day Notice”); and
- an order pursuant to s. 70 for authorization to change the locks to the rental unit.

The Landlord files its own application, seeking the following relief under the *Act*:

- an order of possession pursuant to s. 55 after issuing a the 10 Day Notice;
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of the filing fee pursuant to s. 72.

The Landlord’s application was filed as a direct request but was scheduled for a participatory hearing in light of the Tenants’ application disputing the 10 Day Notice.

T.L. attended as the Landlord’s agent. The Tenants did not attend the hearing.

The Landlord’s agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of the Landlord’s Application and Evidence

The Landlord’s agent advised that she personally delivered the Landlord’s application and evidence on an adult occupant at the rental unit, M.D., who is listed as a respondent on the Tenant’s application, doing so on November 19, 2024.

I note that the Landlord’s application names a sole tenant, G.C. and I am told by the Landlord’s agent that M.D. is the Tenant’s partner. Though its application materials were not personally served on the respondent Tenant G.C., the Landlord was permitted to serve its application by the methods of service set out under s. 89(2) of the *Act*, which includes leaving a copy with an adult who resides with the Tenant. I accept that occurred here.

I find that the Landlord's application materials were served in accordance with ss. 89(2)(c) and 88(e) of the *Act*. I find that these were received on November 19, 2024, being the date of personal service.

End of Tenancy and Failure of the Tenant to Demonstrate Service of Documents

The Landlord's agent indicates that she was unaware that the Tenant had filed an application disputing the 10 Day Notice. Further, she indicates that the Tenant surrendered the key to his rental unit some thirty minutes prior to the hearing along with a letter which stated he had vacated the rental unit.

I accept that the Tenant did not serve his application. I further accept that he has seemingly vacated the rental unit on December 5, 2024, which is when he surrendered his keys to the Landlord.

Practically, I find that the Tenant's claim to cancel the 10 Day Notice is largely moot. The Tenant has voted with his feet. Given that this and the fact that the Tenant failed to serve his application on the Landlord, I find that the Tenant's application should be dismissed in its entirety, without leave to reapply.

Similarly, as the Tenant failed to demonstrate service of his evidence, I find that it would be procedurally unfair to include and consider it as the Landlord has not had notice of the evidence. Accordingly, the Tenant's documentary evidence is excluded and shall not be considered by me.

Though the Tenant appears to have vacated the rental unit, I note that the Landlord has not yet taken back possession of the rental unit as the keys were surrendered immediately prior to the hearing. Given this, I find that the question of whether an order of possession should be granted must be determined on the Landlord's application.

Preliminary Issue – Discrepancy in the Parties Named on the Applications

I note that the Landlord has named G.C. as the respondent tenant, though the Tenant is named differently on his application while also including an applicant M.D. listed as a co-tenant. I have been provided with a copy of the written tenancy agreement, which notes the Tenant G.C., whom the agent tells me goes by the nickname N., which appears to be a shortened version of his middle name as stated in the tenancy agreement.

I make note of this because I have listed the parties on this decision as they are named in the Landlord's application. I do so because, first, the Tenant's application was dismissed, such that any orders that follow flow from the Landlord's application and the parties named therein.

Second, to have standing to file an application with the Residential Tenancy Branch, you need to be a party to a tenancy agreement. In this case, I accept that G.C. is the only named tenant in the tenancy agreement, such that M.D. is merely an occupant. In other words, M.D. does not have any rights or obligations flowing from the tenancy agreement, such that I accept she was improperly named in the Tenant's application in any event.

Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to a monetary order for unpaid rent?
- 3) Is the Landlord entitled to the return of its filing fee?

Evidence and Analysis

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

General Background

The Landlord's agent confirms the following details with respect to the tenancy:

- The Tenant moved into the rental unit on February 1, 2024.
- Rent of \$1,300.00 was due on the first day of each month.
- A security deposit of \$650.00 was paid by the Tenant.

As noted above, I have been provided with a copy of the written tenancy agreement confirming these details.

1) Is the Landlord entitled to an order of possession?

A landlord may end a tenancy under s. 46(1) of the *Act* when a tenant fails to pay rent when it is due under the tenancy agreement by serving a notice to end tenancy on the tenant that is effective no sooner than 10-days after it is received.

A landlord may request an order of possession under s. 55(2)(a) of the *Act* where they have served a notice to end tenancy on the tenant.

Service of the 10 Day Notice and Form and Content

The Landlord's agent advises, and I accept, that she posted the 10 Day Notice to the Tenant's door on November 4, 2024. I find that this was done in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the 10 Day Notice on November 7, 2024, being three days after it was posted to his door.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10 Day Notice provided to me by the Landlord. I find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental

unit, states the correct effective date, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

Granting the Order of Possession

I note that though the Tenant's application was dismissed, he did file to dispute the 10 Day Notice on November 11, 2024, which would have been within the 5-day deadline for filing his application set out under s. 46(4) of the *Act* since the notice was received on November 7, 2024. In other words, I find that the conclusive presumption under s. 46(5) of the *Act* does not apply, despite the dismissal of the Tenant's claim. Accordingly, the onus of demonstrating the 10 Day Notice was properly served rests with the Landlord.

The Landlord's agent advises, and I accept, that the Tenant failed to pay rent in full in October 2024 and failed to pay rent at all on November 1, 2024. I find that the Landlord has established that the 10 Day Notice was properly issued on the Tenant as he failed to pay rent when due under the tenancy agreement.

Accordingly, I grant the Landlord an order of possession under s. 55(2)(a) of the *Act*. As the Tenant appears to have vacated the rental unit, I find that the effective date for the order of possession should be short, such that the order of possession is effective within **two (2) days** of its receipt by the Tenant.

2) Is the Landlord entitled to a monetary order for unpaid rent?

Under s. 67 of the *Act*, the Director may order that one party compensate the other if damage or loss result from their failure to comply with the *Act*, regulations, or tenancy agreement.

Policy Guideline #16, summarizing the relevant principles from ss. 67 and 7 of the *Act*, sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

As noted above, the Landlord's agent indicates the Tenant failed to pay rent in full in October 2024 and did not pay rent at all on November 1, 2024. I am told the arrears for the partial rent payment in October 2024 sits at \$200.00.

The Landlord's agent further advises that the Tenant did not pay rent on December 1, 2024 and that the Landlord also sought this amount. I permit the Landlord to amend its

application under Rule 7.12 of the Rules of Procedure given that the accumulation of rental arrears was reasonably foreseeable by the respondent Tenant.

I accept the agent's testimony in its entirety with respect to the rent payments made by the Tenant from October 1, 2024 to date. I find that the Landlord has established the Tenant failed to pay rent in breach of the tenancy agreement. I note that s. 26(1) of the *Act* reinforces the Tenant's obligation to pay rent under the tenancy agreement, such that the Landlord has also established that the Tenant breached that section of the *Act*.

I find that the tenancy ended on December 5, 2024, either by the Tenant surrendering the keys or by virtue of this decision in which the 10 Day Notice was upheld. Accordingly, I find that the Landlord is entitled to rent due in full on the 1st day of the month as set out in the tenancy agreement, such that I find total arrears owed by the Tenant is \$2,800.00 (\$200.00 + \$1,300.00 + \$1,300.00). I find that mitigation was impossible since the Tenant continued to occupy the rental unit during the relevant period.

Accordingly, I find that the Landlord is entitled to \$2,800.00 in compensation for unpaid rent.

I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord retain the Tenant's security deposit, within interest owed on the security deposit, in partial satisfaction of the amount owed by the Tenant. I accept the security deposit is \$650.00, as confirmed by the tenancy agreement and the agent at the hearing. I find that interest owed to the Tenant pursuant to s. 38(1)(c) of the *Act* and the Regulations is \$15.78.

I have calculated interest by use of the Residential Tenancy Branch's deposit interest calculator for the entire period it has been held in trust by the Landlord, being from when it was received on January 12, 2024 as noted in the tenancy agreement to the date of this decision.

3) Is the Landlord entitled to the return of its filing fee?

I find that the Landlord was successful on its application and is entitled to its filing fee. Accordingly, I order under s. 72(1) of the *Act* that the Tenant pay the Landlord's \$100.00 filing fee.

Conclusion

I dismiss the Tenant's application, in its entirety, without leave to reapply.

The Landlord is granted an order of possession under s. 55(2)(a) of the *Act*. The Tenant and any other occupant must provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

I grant the Landlord a monetary order for unpaid rent, finding that total arrears sit at \$2,800.00.

I grant the Landlord its \$100.00 filing fee, which shall be paid by the Tenant.

I direct that the Landlord retain the security deposit and interest on the security deposit, totalling \$665.78, in partial satisfaction of the total amount owed by the Tenant.

In total, I order under ss. 67 and 72 of the *Act* that the Tenant pay **\$2,234.22** to the Landlord (\$2,800.00 + \$100.00 - \$665.78).

It is the Landlord's obligation to serve the order of possession and monetary order on the Tenant. Should the Tenant fail to comply with the order of possession, it may be enforced by the Landlord at the BC Supreme Court. Should the Tenant fail to comply with the monetary order, it may be enforced by the Landlord at the BC Provincial 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

Residential Tenancy Branch