

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 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 to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant was served on November 28, 2024, in person, in accordance with section 89(1) of the Act. Proof of service form was provided.

I find that the Landlord acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

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.

No evidence was received from the Tenant besides a copy of the 10 Day Notice for Unpaid Rent.

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 around September 1, 2024, with a monthly rent of \$1,490.00, due on the first day of the month, with a security deposit in the amount of \$745.00.

The Landlord applied for an Order of Possession and Monetary Order based on a 10 Day Notice for Unpaid Rent. The Tenant applied to dispute the 10 Day Notice for Unpaid Rent.

The Landlord's position is that the 10 Day Notice for Unpaid Rent was served November 7, 2024, in person to the Tenant, and was issued for \$2,855.00 for unpaid rent for October 2024, November 2024 and pet damage deposit (the 10 Day Notice). The Landlord provided a proof of service confirming the 10 Day Notice was served November 7, 2024, and with a witness signature. The Landlord advised they did return on November 22, 2024, after not hearing from the Tenant about the 10 Day Notice to provide the Tenant with another copy. The Landlord argued the Tenant owed \$620.00 towards October 2024 rent, \$1,490.00 towards November 2024 and the Tenant continued to occupy the rental unit and did not pay rent for December 2024.

Regarding the pet damage deposit, the Landlord's position is that originally the Landlord received \$1,470.00 in August 2024 towards rent and 2 cheques of \$745.00 from BC Income Assistance (Welfare) towards the damage deposit and pet damage deposit. The Landlord argued the Tenant advised they did not have a pet and the pet damage deposit cheque from Welfare was issued in mistake and the Landlord returned \$650.00 in cash to the Tenant. The Landlord advised they deducted \$75.00 for a key fob deposit the Tenant owed. The Landlord argued they then became aware the Tenant did have a pet, and they requested the pet damage deposit be paid again; however, the Tenant has not paid the pet damage deposit.

The Tenant's position is that they did not receive the 10 Day Notice until November 22, 2024, and applied to dispute the 10 Day Notice on November 22, 2024. The Tenant argued they paid \$620.00 towards October 2024 rent after they received an emergency shelter cheque from Welfare and the Tenant argued the same day they gave the Landlord \$620.00 cash. The Tenant argued they stopped paying rent in November 2024 because the Landlord informed the Tenant, they would be evicted for not paying the pet damage deposit. The Tenant advised they also did not pay December 2024 rent for the same reason.

The Tenant originally testified that they paid \$1,745.00 to the Landlord in cash at the beginning of the tenancy and Welfare sent the 2 cheques for \$745.00 in the Landlord's name for the deposits. The Tenant then testified that they gave the Landlord \$2,215.00 at the start of the tenancy for September 2024 rent and the security deposit. The Tenant

argued because the cheques from Welfare were in the Landlord's name the Tenant gave the cheques to the Landlord and was returned \$650.00 in cash. The Tenant argued they do not owe the pet damage deposit because the Tenant paid 3 deposits of \$745.00 and only was given \$650.00 in cash from the Landlord.

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).

The parties have differing positions on when the 10 Day Notice was served, and the issue of credibility comes into play. I find the Landlord to be more credible. The Landlord provided a proof of service document which was signed by a witness and states the 10 Day Notice was served November 7, 2024. Additionally, I find the Landlord's testimony was consistent throughout the hearing while the Tenant's testimony was contradictory. The Tenant advised they stopped paying rent in November 2024 because they were told they would be evicted and were waiting to receive a notice. However, the Tenant also argued they did not receive the 10 Day Notice until November 22, 2024, which calls into question why in the beginning of November 2024 the Tenant would not pay rent.

Based on the above, I find that the 10 Day Notice was duly served to the Tenant on November 7, 2024, and the Tenant had until November 12, 2024, to dispute the 10 Day Notice or to pay the full amount of arrears. The effective date on the 10 Day Notice is November 21, 2024. The Tenant disputed the 10 Day Notice on November 22, 2024, which is after the deadline and after the effective date of the 10 Day Notice. The Tenant did not apply for more time to dispute the 10 Day Notice.

Pursuant to section 46(5) of the Act, if a tenant fails to dispute the 10 Day Notice within the timeframe required, they are conclusively presumed to have accepted the end of the tenancy. Additionally, the Tenant disputed after the effective date of the 10 Day Notice. As such, even if the Tenant applied for more time to dispute the 10 Day Notice, I am unable to grant an extension of time to dispute once the effective date of the 10 Day Notice has passed.

As such, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy.

Even if the Tenant did dispute the 10 Day Notice within the time frame required, I find that the Tenant did not have a legal reason to withhold rent. I don't accept the testimony

of the Tenant that they paid 3 deposits. I find that the Tenant's testimony was inconsistent about what they paid in August 2024. Originally the Tenant testified they paid \$1,745.00 and then the answer changed to \$2,215.00. In contrast, the Landlord's position was clean and consistent throughout the hearing. I find that two deposits were paid by Welfare and \$650.00 was returned to the Tenant.

For the above reasons, the Tenant's application for cancellation of the 10-Day Notice under sections 46 and 66 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 effective **on December 28, 2024, at 1:00 PM**. I find that this date takes into consideration that rent has not been paid but that it is currently the holiday season, and it may be difficult to find alternative accommodation.

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.

Based on the testimony of both parties, I find that rent of \$1,490.00 for November 2024 which was listed on the 10 Day Notice was not paid, and that the Tenant continued to occupy the rental unit and did not pay rent of \$1,490.00 for December 2024. The Tenant argued they paid the \$620.00 owed for October 2024 rent; however, if they had received a cheque from Welfare, deposited the cheque and paid the Landlord in cash, the Tenant would have some banking records to support this. The Tenant provided no banking records. As such, I find that \$620.00 is owed for October 2024 rent.

The Landlord is also seeking \$745.00 for a pet damage deposit; however, as stated under section 1 of the Act, rent does not include a pet damage deposit. As such, I find that the pet damage deposit cannot be recovered under the 10 Day Notice. As such I decline to award the pet damage deposit amount.

Based on the above, I award the Landlord a Monetary Order for unpaid rent of \$3,600.00 for the partial unpaid rent for October 2024 and the unpaid rent for November 2024 and December 2024.

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

This issue was severed from the Tenant's application; however, given that I have ended the tenancy based on the 10 Day Notice, I find it is not necessary to consider this issue.

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 December 28, 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 **\$3,700.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent and/or utilities under section 67 of the Act	\$3,600.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$3,700.00

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 Tenant's entire application is dismissed, 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: December 18, 2024

Residential Tenancy Branch