

## **DECISION**

### **Introduction**

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear linked applications.

The Tenant's November 26, 2024 Application for Dispute Resolution under the Act is for:

- Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act;
- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act;
- A Monetary Order for the cost of emergency repairs, pursuant to sections 33 and 67 of the Act;
- A Monetary Order for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act;
- An Order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the Act;
- An Order to dispute a rental increase, pursuant to section 43 of the Act;
- An Order requiring the Landlord to carry out repairs, pursuant to section 32;
- An Order requiring the Landlord to provide services or facilities as required by the tenancy agreement or the act, pursuant to section 62 of the Act;
- An Order to restrict or suspend the Landlord's right of entry, under section 70 of the Act;
- An Order for the Landlord to return the Tenant's personal property, pursuant to section 65 of the Act;
- An Order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act.

The Landlord's two December 19, 2024 Applications for Dispute Resolution under the Act are for:

- An Order of Possession under a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55 of the Act;

- An Order of Possession under a One Month Notice to End Tenancy for Cause (the One Month Notice), pursuant to sections 47 and 55 of the Act.

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

The Landlord acknowledges service of the Tenant's Proceeding Package and is duly served in accordance with the Act.

The Tenant advised that they did not receive either of the Landlord's Proceeding Packages. The Landlord affirmed that they did not send the Proceeding Packages to the Tenant due to some confusion and the obvious overlap between their claims. I conclude that the lack of service of the Landlord's Proceeding Packages does not have an affect on these proceedings because the Landlord's pursuit of Orders of Possession flowing from either the 10 Day Notice or the One Month Notice would have been addressed in the Tenant's application anyway.

## **Service of Evidence**

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

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## **Preliminary Matters**

### *Severing of secondary claims*

The Tenant's applications include several secondary claims. Pursuant to Rule 6.2 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated.

The primary issue in all three applications is whether the tenancy will end. I find that the Tenant's claims under sections 33, 65, and 67 (return of personal property, and various monetary losses) are not sufficiently related to the Landlord's notices to end tenancy to be heard at the same time. These are dismissed with leave to reapply.

## **Issues to be Decided**

Has there been an unlawful rent increase imposed on the Tenant?

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to end tenancy?

Is the Landlord entitled to an Order of Possession based on a One Month Notice to end tenancy?

Is the Tenant entitled to an Order for the Landlord to carry out repairs?

Is the Tenant entitled to an Order for the Landlord to restore/provide services or facilities required by the tenancy agreement or law(s)?

Should there be an Order to suspend or set conditions on the Landlord's right to enter the rental unit?

Should there be an Order for the Landlord to comply with the Act, regulation, or tenancy agreement?

## **Background**

In a previous decision dated November 13, 2024, the Arbitrator established the following:

- That the Tenant was previously in a tenancy agreement with an individual who will be referred to as WR;
- That WR was actually a tenant of Landlord RB and RB's mother, WR had rented the entire unit and subsequently acquired other subtenants including SB;
- That WR abandoned the rental unit and the tenancy arrangements with their Landlord and subtenants;
- That SB entered into a new tenancy with the Landlords RB and their mother effective on July 1, 2024, with a monthly rent of \$650.00 due on the first day of each month.

This decision had a correction issued by the Arbitrator on December 14, 2024, but I confirm that the corrections did not influence the facts stated above.

## **Facts and Analysis**

### **Has there been an unlawful rent increase imposed on the Tenant?**

During the hearing, the Tenant discussed how their agreement to pay \$650.00 per month was made while under pressure from the Landlord to compensate for the money owing from WR. It is possible that WR collected rent from the subtenants and did not pay his own rent to the Landlord before he abandoned the rental unit. Regardless of what happened with WR, as stated at the hearing, I am unable to change facts previously established by another Arbitrator in a previous decision. If the Tenant felt that there was an issue with any of the facts established in the November 13, 2024 decision,

they were required to file for review. For the purposes of this current dispute resolution proceeding, I must accept the previous decision as established facts.

Accordingly, there was no rent increase even if the Tenant ended up paying a higher rent to the current Landlord when compared to what they were paying to WR. These were two different tenancy agreements, and thus, this does not qualify as a rent increase.

This claim is dismissed without leave to reapply.

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

Both parties agree that the Landlord issued a 10 Day Notice on November 18, 2024, which indicated a move-out date of November 28, 2024, and listed \$100.00 in unpaid rent due as of November 1, 2024. As discussed at the hearing, because the notice was posted to the door it was deemed received by the Tenant on November 21, 2024, which in turn changed the move-out date to December 1, 2024.

After receiving a 10 Day Notice, a tenant must either pay the arrears or dispute the notice within 5 days. The Tenant disputed the notice on November 26, 2024, which is within the 5-day time limit when considering the deeming provisions. Thus, the burden of proof falls on the Landlord to establish that they have cause to end the tenancy under this notice for unpaid rent.

There was a consensus on most of the history of rent paid throughout the tenancy with the exception of one cash payment which will be assessed later on. Both parties agreed that the Tenant paid the following rents to the current Landlord:

- \$500.00 on July 23, 2024, via e-transfer;
- \$1,100.00 on August 16, 2024, via cheque;
- \$600.00 sometime in October 2024
- \$950.00 on November 2, 2024, via e-transfer.

The total sum of established rents paid is \$3,150.00 by November 2, 2024. Both parties confirmed that, as of the date of this hearing, no additional rent has been paid. At the time the 10 Day Notice was issued, there had been 5 payable months of rent that were due at a rate of \$650.00 per month (July, August, September, October, and November of 2024) totaling \$3,250.00 in total.

The Tenant asserts that they paid \$150.00 in cash to the Landlord sometime in August 2024, while the Landlord denies ever receiving this amount. This is the determining factor as to whether the Tenant had any rental arrears at the time when the 10 Day Notice was issued.

On the balance of probabilities, I have determined that the Tenant did not pay \$150.00 in cash towards rent in August 2024. The reasons for reaching this conclusion include the lack of details from the Tenant on a clear date, time, or supporting details on when this amount was allegedly paid. Furthermore, the math does not align with the Tenant's story because if that were true, then the Tenant would have been in overpayment in the sum of \$50.00 at the time that the notice was issued. Alternatively, if the \$150.00 was not paid, there would be \$100.00 owing which is consistent with the amount of arrears indicated on the Landlord's 10 Day Notice.

In conclusion, find that the Landlord's 10 Day Notice is valid, and that the Tenant did not pay the arrears within the required timeline to cancel the notice. The Tenant's application to cancel the 10 Day Notice is dismissed, without leave to reapply. Accordingly, I find that this tenancy ended on the automatically corrected effective date of the 10 Day Notice on December 1, 2024.

The Landlord has established their entitlement to an Order of Possession based on the 10 Day Notice. I have considered the fact that we are entering the winter months, and that the Tenant has a child, thus I have decided to date the Order of Possession for January 31, 2025, at 1:00 PM, to give them extra time to find alternative accommodation.

In accordance with section 55(1.1) of the Act, I will also issue a Monetary Order for unpaid rent accounting for all rent up until the date of this hearing. The sum of the Monetary Order shall be \$750.00 which represents \$100.00 owing from the 10 Day Notice as well as \$650.00 from the unpaid December 2024 rent.

**Is the Landlord entitled to an Order of Possession based on a One Month Notice to end tenancy?**

This claim is rendered moot as the tenancy is ending. It is dismissed without leave to reapply.

**Is the Tenant entitled to an Order for the Landlord to carry out repairs?**

This claim is rendered moot as the tenancy is ending. It is dismissed without leave to reapply.

**Is the Tenant entitled to an Order for the Landlord to restore/provide services or facilities required by the tenancy agreement or law(s)?**

This claim is rendered moot as the tenancy is ending. It is dismissed without leave to reapply.

**Should there be an Order to suspend or set conditions on the Landlord's right to enter the rental unit?**

This claim is rendered moot as the tenancy is ending. It is dismissed without leave to reapply.

**Should there be an Order for the Landlord to comply with the Act, regulation, or tenancy agreement?**

This claim is rendered moot as the tenancy is ending. It is dismissed without leave to reapply.

**Conclusion**

The following claims made by the Tenant are dismissed without leave to reapply:

- Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act;
- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act;
- An Order to dispute a rental increase, pursuant to section 43 of the Act;
- An Order requiring the Landlord to carry out repairs, pursuant to section 32;
- An Order requiring the Landlord to provide services or facilities as required by the tenancy agreement or the act, pursuant to section 62 of the Act;
- An Order to restrict or suspend the Landlord's right of entry, under section 70 of the Act;
- An Order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act.

The following claims made by the Tenant are severed and dismissed with leave to reapply:

- A Monetary Order for the cost of emergency repairs, pursuant to sections 33 and 67 of the Act;
- A Monetary Order for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 of the Act;
- An Order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the Act;
- An Order for the Landlord to return the Tenant's personal property, pursuant to section 65 of the Act.

I grant the Landlord a Monetary Order in the amount of **\$750.00** for unpaid rent accrued up until the date of this hearing.

I also grant an Order of Possession to the Landlord effective on **January 31, 2025, at 1:00 PM**, after service of this Order on the Tenant. Should the Tenant or any occupant 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.

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 20, 2024

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Residential Tenancy Branch