

## **DECISION**

### **Introduction**

This hearing dealt with Applications for Dispute Resolution from both the Tenant and the Landlord under the *Residential Tenancy Act* (the Act). The Tenant's Application for Dispute Resolution, filed on November 27, 2024 (the Application), is 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

The Landlord's Application for Dispute Resolution, filed on November 29, 2024 (the Cross-Application), is for:

- An Order of Possession based on the 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 the Cross-Application from the Tenant under section 72 of the Act

The Landlord called into the teleconference at the date and time set for the hearing with her Agent, S.S.Z. and Witness, C.L. Although I waited until 9:48 AM to enable the Tenant to call into the teleconference hearing scheduled for 9:30 AM, no one attended the hearing for the Tenant.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord, S.S.Z., C.L., and I were the only persons who had called into the hearing. The Landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

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

The Landlord says she never received a copy of the Tenant's Proceeding Package, but that she received a courtesy copy of the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch (RTB). The Tenant did not attend the hearing to provide any testimony regarding service of the Proceeding Package or in support of the Application. Based on the undisputed testimony of the Landlord, I find that the Landlord was not served with the Proceeding Package. Consequently, I dismiss the Tenant's

Application. For the reasons set out in the Analysis section below, the Tenant's Application is dismissed without leave to reapply.

The Landlord says the Proceeding Package for the Cross-Application was posted to the Tenant's door on December 5, 2024. The Landlord confirmed the Proceeding Package included copies of all the documents the Landlord has submitted as evidence to the RTB in support of the Cross-Application.

Based on the submissions and evidence before me, I find that the Tenant was served with the Proceeding Package, including the Landlord's evidence, for the Cross-Application on December 8, 2024, the third day after the documents were attached to the Tenant's door, in accordance with section 89(2)(d) of the Act.

## **Issues to be Decided**

Is the Landlord entitled to an Order of Possession and a Monetary Order?

Is the Landlord entitled to recover the filing fee for the Cross-Application from the Tenant?

## **Background and Evidence**

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

The tenancy agreement submitted into evidence by the Landlord shows that this tenancy began on April 15, 2024, with a monthly rent of \$1,960.00, due on the first day of the month. The Landlord states the Tenant paid a security deposit of \$980.00 on April 13, 2024, which is still held in trust by the Landlord.

The Landlord's sworn testimony was that the Tenant did not pay rent when it was due on November 1, 2024. The Landlord says she tried to serve the 10 Day Notice to the Tenant in person on November 18, but when nobody answered the door, she posted it on the door of the rental unit. A Proof of Service form (RTB-34) was submitted into evidence by the Landlord stating the 10 Day Notice was posted to the Tenant's door at 4:35 PM on November 18. The Proof of Service form is signed by the Landlord, who served the documents, and Witness C.L. who observed service of the documents. C.L. testified at the hearing to confirm service of the 10 Day Notice on November 18.

The Landlord states that, to the best of her knowledge, the Tenant still resides in the rental unit and his belongings are still there. The Landlord believes the Tenant has been the only occupant of the rental unit since late-August or early-September 2024. The Landlord testified that the Tenant has not paid any rent since the 10 Day Notice was served on November 18. The Tenant filed an application to dispute the 10 Day Notice on November 27, but the Landlord says the Tenant never served her with the Application.

## **Analysis**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

### **Is the Landlord entitled to an Order of Possession and a Monetary Order?**

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the rent arrears or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the RTB. If the tenant does not pay the full amount of arrears owed to the Landlord or dispute the 10 Day Notice, they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

Based on the Landlord's undisputed testimony and the documentary evidence, I find that the Landlord served the 10 Day Notice by posting it on the Tenant's door on November 18, 2024 in accordance with section 88(g) of the Act. Without any evidence or testimony from the Tenant confirming the date he received the 10 Day Notice, I find the Tenant was duly served. Under section 90 of the Act, the Tenant is deemed to have received the 10 Day Notice on November 21, being the third day after it was attached to his door. Therefore, the Tenant had until November 26 to dispute the 10 Day Notice or to pay the arrears.

The Tenant's Application was filed on November 27, 2024, one day late, and was not properly served to the Landlord. The Landlord's undisputed testimony is that no rent payments have been received from the Tenant since the 10 Day Notice was served. Therefore, because the Tenant failed to either pay the arrears or file the Application within five days of receiving the 10 Day Notice, I find that the Tenant is presumed to have accepted the 10 Day Notice under section 46(5) of the Act and ought to have vacated the rental unit by November 28, the effective date of the 10 Day Notice.

For the above reasons, together with the Tenant's failure to attend the hearing or provide any evidence, the Tenant's Application to cancel the 10 Day Notice and for an extension of time to dispute the 10 Day Notice is dismissed, without leave to reapply.

Section 46(2) of the Act requires that all notices issued under section 46 must comply with section 52 of the Act. Section 55(1) of the Act further states that, if a landlord's notice to end tenancy complies with section 52 of the Act, the director must grant the landlord an order of possession if the landlord's notice to end tenancy is upheld during the dispute resolution proceedings.

I have reviewed the 10 Day Notice and find that it complies with the formal requirements set out in section 52 of the Act. The 10 Day Notice is signed and dated by the Landlord, states the address of the rental unit, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30). Therefore, I find that the Landlord is entitled to an Order of Possession based on the 10 Day Notice under sections 46 and 55 of the Act.

Section 55(1.1) of the Act provides that where a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with section 52 of the Act, the landlord must be granted a monetary order for unpaid rent. Based on the undisputed testimony of the Landlord, I find that the Tenant is in arrears of \$1,960.00 for the month of November 2024. Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$1,960.00.

Policy Guideline #3 states that tenants are not liable to pay rent after a tenancy agreement has ended pursuant to section 44 of the Act. However, if a tenant remains in possession of the premises (overholds), the tenant is liable to pay occupation rent until the landlord recovers possession of the premises. As the Tenant continues to occupy the rental unit after the tenancy ended on November 28, 2024, the Tenant is an overholding tenant as defined by section 57 of the Act.

Section 57(3) states a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy has ended. I therefore award the Landlord an additional \$1,960.00 for occupation rent for December 2024.

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 unpaid rent and overholding rent under section 67 of the Act, in the total amount of \$3,920.00. Under section 72(2)(b) of the Act, I allow the Landlord to retain the Tenant's security deposit of \$980.00, plus interest of \$18.51, in partial satisfaction of the monetary award.

### **Is the Landlord entitled to recover the filing fee for the Cross-Application from the Tenant?**

As the Landlord was successful, I grant the Landlord's request to recover the \$100.00 filing fee paid for the Cross-Application from the Tenant under section 72 of the Act.

### **Conclusion**

I dismiss the Tenant's Application for an extension of the time limit to dispute the 10 Day Notice and to cancel the 10 Day Notice under sections 46 and 66 of the Act, without leave to reapply.

I grant an Order of Possession to the Landlord **effective seven (7) days 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 **\$3,021.49** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
A Monetary Order for unpaid rent under sections 55 and 67 of the Act	\$3,920.00
Authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order under section 72 of the Act	-\$980.00
Amount of interest owed on security deposit from April 13, 2024 to date of this Order	-\$18.51
Authorization to recover the filing fee for the Cross-Application from the Tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$3,021.49</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 24, 2024

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Residential Tenancy Branch