

DECISION

Introduction

This hearing 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

It also 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 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
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Both parties were represented by agents at the hearing. The parties did not personally attend.

Adjournment

At the outset of the hearing, the Tenant's agent sought an adjournment. The agent said that the Tenant was in Winnipeg (in relation to an estate issue) and was attending meetings. She did not explain what kind of meetings the Tenant was attending or why they could not be rescheduled. She also said that the Tenant had documentary evidence that he wanted to submit for consideration. She did not explain why the evidence was not submitted before the hearing or when the application was first filed. She said that the Tenant left for Winnipeg on December 5, 2024. She did not explain why the documents were not filed sooner or why she could not have filed them on his behalf. She asked for the case to be adjourned until early February 2025.

The Landlord opposed the adjournment, saying that the Tenant has not paid rent and that early February 2025 would mean two additional months of unpaid rent.

In accordance with the Rules of Procedure, I dismiss the request for an adjournment. I find that the adjournment arises primarily out of the actions and neglect of the Tenant. Simply put, it is not at all clear to me why the Tenant could not make arrangements to attend this hearing. I also find the likely prejudice resulting from the lengthy delay sought by the Tenant to weigh against granting the adjournment.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both parties confirmed receipt of the other party's Proceeding Package. The Tenant's agent acknowledged that it was posted on the door of the rental unit. The Landlord said that he received a courtesy copy of the Tenant's Proceeding Package from the RTB. The Landlord did not dispute service. Notwithstanding the fact that it was not the Tenant who provided his Proceeding Package to the Landlord, I find that both Proceeding Packages were sufficiently served in accordance with section 71(b) of the Act.

Service of Evidence

The Tenant's agent acknowledged receiving the Landlord's evidence, which was posted on the door with the Proceeding Package. The only documentary evidence relied upon by the Tenant was the 10 Day Notice, which was also part of the Landlord's evidence package. I find that all documentary evidence relied upon by the parties was sufficiently served.

Both the Landlord's agent and the Tenant's agent sought to submit evidence after the beginning of the hearing. The Landlord submitted a document through the online portal. However, because I was not satisfied that it had been served on the Tenant, I did not consider it. The Tenant's agent asked to submit documents after the end of the hearing. Because that would be unfair to the Landlord and because the documents in question all existed well before the hearing, I did not allow the Tenant to submit additional evidence.

Issues to be Decided

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recover the filing fee?

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 tenancy began on January 15, 2024. The parties disagree on the amount of rent. The Landlord said that rent was \$800.00 a month. The Tenant said that rent was \$600.00 a month.

The Landlord said that the Tenant made the following payments during the tenancy:

January 23, 2024:	\$850.00 (Security Deposit and Pet Deposit)
February 14, 2024:	\$600.00
March 20, 2024:	\$600.00
April 17, 2024:	\$1,640.00
May 15, 2024:	\$600.00

The cheques were all sent directly to the Landlord by the government of British Columbia. The Landlord said that no rent was paid after May 15, 2024 by or on behalf of the Tenant.

The Landlord issued the 10 Day Notice by attaching it to the Tenant's door. The 10 Day Notice uses form RTB-30. The Landlord's agent did not indicate when the 10 Day Notice was attached to the Tenant's door, however it was signed on November 21, 2024. The Tenant's Application indicates that he received the 10 Day Notice on November 25, 2024. The 10 Day Notice is signed and dated by the Landlord's agent. It provides the address of the rental unit, the Landlord's address and an effective date of December 2, 2024. It states that the Tenant has failed to pay \$5,310.00 in unpaid rent, due on November 15, 2024.

The Landlord's agent explained that there were previous efforts to evict the Tenant by another advocate acting on behalf of the Landlord but that the wrong form was used.

The Tenant's agent said that \$600.00 in rent has been paid each month directly by the government of British Columbia, on behalf of the Tenant. The Tenant's advocate read off confirmation of payment receipts/letters and provided dates on which payments were made. These receipts were not submitted in evidence by the Tenant.

Analysis

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 39 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(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 39(5).

I find that the 10 Day Notice was duly served to the Tenant on November 25, 2024, and that the Tenant had until December 5, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenant disputed the 10 Day Notice on November 28, 2024, which is within 5 days of service. The onus is therefore on the Landlord to convince me that the 10 Day Notice is valid.

The first question I must consider is monthly rent. There was no written tenancy agreement between the parties. Little information was provided about the agreement between the parties. Both parties were represented by agents, neither of whom was present when the Landlord and the Tenant entered into an oral agreement. The Landlord says that monthly rent was \$800.00, while the Tenant says that it was \$600.00. Based on the evidence submitted, I find that monthly rent was \$600.00. This is based on the fact that most payments made during the first 5 months of 2024 were for \$600.00, and there is no indication that the Landlord ever complained or asked for the “missing” \$200.00. It is puzzling that the first payment was for \$850.00. The Landlord’s agent said that this amount was a security/pet damage deposit. However, if that were the case, it would have been for \$800.00 and not \$850.00, since such deposits cannot exceed one half month of rent each. Regarding this amount, I find that \$600.00 was for January rent (which was not otherwise paid) and \$250.00 was a security deposit.

The next question I must consider is whether the 10 Day Notice is valid.

I accept the Landlord’s evidence that the Tenant has not paid rent since May 2024. I do not accept the Tenant’s advocate’s claim that rent was paid on behalf of the Tenant each month between June and December 2024. The Tenant did not submit corroborating evidence for this claim, which he clearly could have done. I therefore accept that rent has not been paid between June and December 2024.

The following table shows the rent that I find is outstanding:

Month	Amount due	Amount paid
January 2024	\$600.00	\$600.00
February 2024	\$600.00	\$600.00
March 2024	\$600.00	\$600.00
April 2024	\$600.00	\$1,640.00
May 2024	-\$440.00	\$600.00
June 2024	\$160.00	\$0.00
July 2024	\$760.00	\$0.00
August 2024	\$1,360.00	\$0.00
September 2024	\$1,960.00	\$0.00
October 2024	\$2,560.00	\$0.00
November 2024	\$3,160.00	\$0.00

The 10 Day Notice is signed and dated by the Landlord’s agent. It uses the appropriate form. It provides an effective date. Finally, it provides the address of the rental unit. In other words, it satisfies the formal requirements of the Act.

The 10 Day Notice indicates the wrong amount of unpaid rent as of November 2024. I find it is appropriate to amend the 10 Day Notice to indicate \$3,160.00 as of November 15, 2024 in accordance with section 68 of the Act, since the Tenant would have known that rent was not paid.

The 10 Day Notice is valid. The Landlord is therefore entitled to an Order of Possession.

Is the Landlord entitled to unpaid rent?

Based on the above, the Landlord is entitled to a monetary order in the amount of \$3,160.00, less the security deposit.

Is the Landlord entitled to recover the filing fee?

The Landlord was successful and is entitled to recover the filing fee.

Conclusion

The Tenant's application is dismissed without leave to reapply.

The Landlord's application is granted. The Landlord is granted an Order of Possession dated January 14, 2024. The Order of Possession must be served on the Tenant in accordance with the Act and can be filed in the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of **\$3,003.78** based on the following:

Unpaid rent	\$3,160.00
Plus filing fee	\$100.00
Less security deposit with interest	\$256.22
Total	\$3,003.78

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

Residential Tenancy Branch