

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 July 30, 2024 (the Application), is 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 for the Landlord to provide services or facilities required by law under section 27 of the Act

The Landlord's Application for Dispute Resolution, filed on December 19, 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

K.D., who confirmed she is acting as Agent for the Corporate Landlord, called into the teleconference at the date and time set for the hearing. Although I waited until 11:20 AM to enable the Tenant to call into the teleconference hearing scheduled for 11:00 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 K.D. and I were the only persons who had called into the hearing. K.D. 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

K.D. states she was notified of the Tenant's Application by the Residential Tenancy Branch (RTB), but that the Tenant did not serve a Proceeding Package for the Application to the Landlord.

The Tenant did not attend the hearing to provide any testimony in support of service of the Proceeding Package or in support of the Application itself. Based on the undisputed testimony of K.D., I find that the Landlord was not served with the Proceeding Package. Consequently, I dismiss the Tenant's Application. For the additional reasons set out in the Analysis section below, the Tenant's Application is dismissed, without leave to reapply.

K.D. states she attached the Proceeding Package for the Cross-Application to the Tenant's door on December 21, 2024. The Landlord submitted a signed Proof of Service form (#RTB-55) into evidence to confirm this service. K.D. testified that the Proceeding Package included copies of all the evidence the Landlord submitted 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 for the Cross-Application, including the Landlord's evidence, on December 24, 2024, the third day after it was posted to the Tenant's door, in accordance with sections 89(2)(d) and 90(c) of the Act.

Preliminary Matters

Increased Claim for Unpaid Rent

K.D.'s testimony was that, since the 10 Day Notice was served to the Tenant, the Tenant has continued to live in the rental unit and not pay rent. Rule 7.12 of the RTB Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

K.D. requested that the Cross-Application be amended to include unpaid rent for January 2025. I find it could be reasonably anticipated by the Tenant that the Landlord would seek compensation for unpaid rent for the months he has continued to reside in the rental unit and not pay rent. Under rule 7.12, I therefore allow the Landlord to claim a monetary order for unpaid rent for \$600.00 for January 2025 in addition to the \$6,000.00 in unpaid rent sought from March to December 2024.

Issues to be Decided

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

Is the Tenant entitled to an Order for the Landlord to Provide Services or Facilities?

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 parties, but will refer only to what I find relevant for my decision.

The tenancy agreement submitted into evidence by the Landlord shows that the tenancy began on December 1, 2023, with a monthly rent of \$600.00, due on the first day of the month. The Tenant was also required to pay a \$50.00 fee per month for utilities. K.D. states the Landlord did not collect a pet damage or security deposit at the start of the tenancy or during the tenancy.

K.D.'s sworn testimony was that the Tenant failed to pay rent when it was due on July 1, 2024, and that he was already in arrears of rent from March to June. K.D. states the 10 Day Notice was left in the mailbox on the Tenant's door on July 22. The Landlord submitted a Proof of Service form (#RTB-34) signed by K.D. and a witness to this service into evidence. The Tenant filed the Application, which disputes the 10 Day Notice, on July 30.

K.D. states that, to the best of her knowledge, the Tenant continues to reside in the rental unit and has not paid any money towards rent since the 10 Day Notice was served to the Tenant. K.D. testified that the Landlord did not seek an Order of Possession based on the 10 Day Notice earlier because they first tried to arrange a payment plan with the Tenant. However, as no payments towards rent have been received and the Tenant is now almost one year behind on rent, the Landlord is seeking an Order of Possession based on the 10 Day Notice.

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 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 RTB. 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).

Based on K.D.'s testimony and the documentary evidence, I find that the Landlord served the 10 Day Notice by leaving it in the Tenant's mailbox on July 22, 2024, in accordance with section 88(f) of the Act. I therefore find the Tenant was duly served and deemed to have received the 10 Day Notice under section 90(d) of the Act by July 25, the third day after it was left in his mailbox. Therefore, the Tenant had until July 30 to dispute the 10 Day Notice or to pay the full amount of the arrears.

The Tenant's Application was filed on July 30, 2024, within the required five days, but this was not properly served to the Landlord. Additionally, it is undisputed that the Tenant has not paid the monthly rent since March 1.

Section 26 of the Act states that, unless a tenant has a right under the Act to deduct all or a portion of the rent, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. For the above reasons, together with the Tenant's failure to attend the hearing or provide any evidence, I have dismissed the Tenant's Application to cancel the 10 Day Notice, without leave to reapply.

Section 46(2) of the Act requires that all notices issued under section 46 of the Act 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. K.D. signed and dated the 10 Day Notice as agent for the Landlord, and the 10 Day Notice states the address of the rental unit, the grounds for ending the tenancy, and it is in the approved form (#RTB-30). Therefore, I find 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 K.D., I find that the Tenant is now in arrears of \$6,600.00 (\$600.00 x 11) from March 2024 to January 2025. Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$6,600.00.

Is the Tenant entitled to an Order for the Landlord to Provide Services or Facilities?

Rule 6.2 of the RTB Rules of Procedure permits an arbitrator to dismiss other claims that are included in an application to cancel a notice to end tenancy. As I have found that the tenancy is ending, I find it is not necessary to analyze the Tenant's Application for an order for the Landlord to provide services or facilities under section 27 of the Act. The Tenant's Application is therefore dismissed, without leave to reapply.

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

As the Landlord was successful, I find that the Landlord is entitled 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 to cancel the 10 Day Notice under section 46 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 **\$6,700.00** under the following terms:

Monetary Issue	Granted Amount
A Monetary Order for unpaid rent under sections 67 and 55 of the Act	\$6,600.00
Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$6,700.00

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 Provincial Court of British Columbia (Small Claims Court).

I dismiss the Tenant's Application for the Landlord to provide services or facilities under section 27 of the Act, 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: January 17, 2025

Residential Tenancy Branch