

DECISION

Introduction

This hearing dealt with the Landlord's and the Tenant's Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act). The Tenant's first Application for Dispute Resolution (the First Application) and amendment 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
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Tenant's second Application for Dispute Resolution (the Second 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

The 10 Day Notice disputed in the First Application and the Second Application is the same. The Tenant filed duplicate applications.

The Landlord's Application for Dispute Resolution is for:

- an Order of Possession for unpaid rent under section 46 of the Act
- a Monetary Order for unpaid rent under sections 26 and 67 of the Act
- recovery of the \$100.00 filing fee under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord's agent (the Agent) testified that the Landlord was not served with the Tenant's First Application, nor the Tenant's Second Application. The Agent testified that she learned of the Tenant's First Application because the Tenant messaged her the code and she contacted the RTB to get the Notice of Dispute Resolution Proceeding.

Based on the undisputed testimony of the Landlord I find that the Landlord was not served with the Proceeding Package for either the Tenant's First Application or the Tenant's Second Application. The Tenant's applications for dispute resolution are

therefore dismissed without leave to reapply for failure to serve in accordance with the Act.

The Agent testified that the Tenant's roommate was personally served with the Landlord's Proceeding Package and evidence on December 20, 2024. A witnessed proof of service document stating same was entered into evidence. I find that the Tenant was deemed served with the Proceeding Package and evidence on December 23, 2024 in accordance with section 89(2)(c) and section 90 of the Act.

The Agent testified that the Tenant was served evidence responding to the Tenant's First Application via courier on December 5, 2024, evidence of same was provided. I find that this evidence was served in accordance with the November 15, 2024 Director's Order.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to an Order of Possession for cause?
- Is the Landlord entitled to a Monetary Order for Unpaid rent?
- Is the Landlord entitled to recover the filing fee from the Tenant?

Background and Evidence

I have reviewed all presented evidence, including the testimony of the Agent but will refer only to what I find relevant for my decision. The Landlord had a witness attend the hearing; however, the Agent elected not to question their witness or have them testify.

Evidence was provided showing that this tenancy began on April 1, 2022, with a monthly rent of \$2,058.61, due on first day of the month, with a security deposit in the amount of \$975.00.

The Agent testified that the Tenant was served with the 10 Day Notice via posting on December 3, 2024. A witnessed proof of service document stating same was entered into evidence. The 10 Day Notice was entered into evidence, is signed by the Agent, is dated December 3, 2024, gives the address of the rental unit, states that the effective date of the notice is December 9, 2024, is in the approved form, #RTB-30, and states that the Tenant failed to pay \$2,058.61 that was due on December 1, 2024.

The Agent testified that the Tenant did not pay any rent for December 2024 or January 2025. The Agent testified that the Tenant usually paid rent via e-transfer. The Agent entered into evidence the Landlord's bank statement which shows that no rent for December 2024 was paid to the Landlord by the Tenant.

The Tenant's Amendment to the First Application states:

What happened is that I had a rented house, I gave \$2,500 as a deposit to these people. And after paying them, they blocked me. So I was scammed. The money they stole from me was the rent money for [the rental property]. at the beginning of the month my new roommates would give me the deposit for the new house and I would pay the rent for the [rental property] without problem, but given the situation new roommates didn't give me any money. I am forced to leave the country and go back to my house in Mexico. I just need a few days because my fly to Mexico is at the end of the month.

The Agent testified that the Tenant has not provided the Landlord with a notice to end tenancy.

The Agent testified that the Landlord is seeking a monetary order for December 2024 and January 2025 rent totalling \$4,117.22.

The Agent testified that the Tenant was served with the One Month Notice in person on November 23, 2024. The Tenant filed to dispute the One Month Notice on November 25, 2024. The One Month Notice was entered into evidence, is signed by the Agent, is dated November 22, 2024, gives the address of the rental unit, states that the effective date of the notice is December 31, 2024, is in the approved form, #RTB-33, and states the following grounds for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The Agent testified that the Tenant has engaged in unauthorized construction in the rental property, adding additional bedrooms that he rents out on Airbnb. The Agent testified that the Tenant allowed 7-8 people to stay at the rental property at a time.

Analysis

Is the Landlord entitled to an Order of Possession in accordance with the 10 Day Notice?

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(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 46(5).

I find that the 10 Day Notice was deemed served on the Tenant on December 6, 2024 and that the Tenant had until December 11, 2024, to dispute the 10 Day Notice or to

pay the full amount of the arrears. The Tenant filed to dispute the 10 Day Notice on December 9, 2024. I find that the Tenant filed to dispute the 10 Day Notice within 5 days of receiving it.

The Tenant's amendment confirms that rent was not paid by the Tenant to the Landlord for December 2024. Based on the Agent's testimony, the Landlord's banking records and the Tenant's amendment form, I find that the Tenant did not pay any rent for December 2024. I accept the Agent's undisputed testimony that no rent for January 2025 has been paid.

I note that whether or not the Tenant was the victim of a scam does not impact the Tenant's obligation to pay rent on time to the Landlord.

For the above reasons, the 10 Day Notice is upheld and the Landlord is entitled to a 2 day Order of Possession under sections 46 and 55 of the Act.

Is the Landlord entitled to an Order of Possession in accordance with the One Month Notice?

As I have determined that the Landlord is entitled to an Order of Possession under sections 46 and 55 of the Act, I find it unnecessary to determine if the Landlord is also entitled to an Order of Possession under sections 47 and 55 of the Act.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*.

Pursuant to section 26(1) of the *Act*, I find that the Tenant was obligated to pay the monthly rent in the amount of \$2,058.61 on the first day of each month. Based on the undisputed testimony of the Agent, the Landlord's bank records and the Tenant's amendment, I find that the Tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the Landlord, under section 67 of the Act, \$4,117.22 in unpaid rent from December 2024 to January 2025.

Is the Landlord entitled to recover the \$100.00 filing fee from the Tenant?

As the Landlord was successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the Tenant, pursuant to section 72 of the *Act*.

Conclusion

I grant an Order of Possession to the Landlord **effective two (2) 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 **\$4,217.22** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under sections 26 and 67 of the Act	\$4,117.22
recovery of the filing fee from the Tenant	\$100.00
Total Amount	\$4,217.22

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) 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 application 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 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: January 7, 2025

Residential Tenancy Branch