

## **DECISION**

### **Introduction**

The Landlord filed two applications seeking the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities signed on November 18, 2024 (the “10 Day Notice”); and
- an order of possession pursuant to s. 55 after issuing a One-Month Notice to End Tenancy signed on November 13, 2024 (the “One Month Notice”).

The Tenant files his own application seeking the following relief under the *Act*:

- an order pursuant to ss. 46 and 66 to cancel the 10 Day Notice and more time to do so;
- an order pursuant to ss. 47 and 66 to cancel the One Month Notice and more time to do so;
- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 43 disputing a rent increase;
- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities required by the tenancy agreement or law;
- an order pursuant to s. 70 restricting the Landlord’s right of entry; and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

The Landlord’s applications were originally scheduled for hearing on December 19, 2024 but were adjourned and joined with the Tenant’s application. The reasons for the adjournment are outlined in my interim decision of December 19, 2024.

At the reconvened hearing, R.B. attended as the Landlord. The Tenant did not attend the hearing.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

## **Service of the Applications and Evidence**

The Landlord advised that she served her applications on the Tenant by posting it to his door on December 20, 2024. I am further told by the Landlord that her evidence had previously been posted to the Tenant's door on December 12, 2024, though subsequent evidence was also posted to the Tenant's door on December 27, 2024.

I accept the Landlord's undisputed testimony with respect to service of documents. I find that the Landlord's applications were served in accordance with s. 89(2) of the *Act*, which permits it to be posted to the door as it is an application by the Landlord for an order of possession. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord's applications on December 23, 2024, being three days after they were posted to his door.

With respect to the Landlord's evidence, I find that it was served in accordance with s. 88 of the *Act* by being posted to the Tenant's door on December 12<sup>th</sup> and 27<sup>th</sup>. Pursuant to s. 90 of the *Act*, I deem that first evidence package was received on December 12, 2024, with the subsequent evidence package being received on December 30, 2024.

I note that the Landlord's second evidence package contravened the 12-day deadline for receipt of evidence as noted in my interim decision. However, I accept that the difference, being one day late, is not significant given the additional evidence served appears to have been minimal. I find there is little prejudice to the Tenant to include the evidence due to a slight breach of the notice periods, such that I shall include and consider the Landlord's late evidence.

The Landlord acknowledged receipt of the Tenant's application on December 25, 2024, such that I find under s. 71(2) of the *Act* that it was sufficiently served on her.

As I accept the Tenant had notice of this hearing, both due to being served by the Landlord and due to one of the applications having been filed by him, the hearing proceeded in his absence as permitted under Rule 7.3 of the Rules of Procedure.

## **Preliminary Issue – Severing the Tenant's Claims**

As noted in my interim decision, Rule 2.3 of the Rules of Procedure requires claims in an application to be related to each other grants me the ability to sever unrelated claims.

In this instance, the primary issue is whether the tenancy will continue or not based on the notices to end tenancy served by the Landlord. The Tenant's other relief is unrelated to this and, if the tenancy does end, would be rendered moot as the relief only relates to an ongoing tenancy.

Accordingly, I find the following claims are insufficiently related to the primary issues in dispute:

- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 43 disputing a rent increase;
- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities required by the tenancy agreement or law;
- an order pursuant to s. 70 restricting the Landlord's right of entry; and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

The claims listed above are dismissed. In the case of the Tenant's monetary claims, they are dismissed with leave to reapply. The other claims tied to ongoing tenancy may be dismissed with or without leave to reapply depending on whether the tenancy continues.

The hearing proceeded strictly on the enforceability of the 10 Day Notice and One Month Notice.

## **Issues in Dispute**

- 1) Should the 10 Day Notice be cancelled? If not, is the Landlord entitled to an order of possession and order for unpaid rent?
- 2) Should the One Month Notice be cancelled? If not, is the Landlord entitled to an order of possession?

## **Evidence and Analysis**

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

### ***General Background***

As noted in my interim decision, the Tenant was found to have a tenancy in a previous decision from the Residential Tenancy Branch dated November 13, 2024. The file number for the previous matter is noted on the cover page of this decision.

In short, the previous arbitrator found the Tenant had come to move into the residential property after being permitted there by a previous tenant. That previous tenant abandoned the rental unit, though the individuals he permitted into the residential property remained. The Landlord was then found to have formed tenancies with the individual occupants. In the case of Tenant, it was found that he was to begin paying monthly rent beginning on July 1, 2024, which is when his tenancy was found to start.

In my interim decision, I noted that the Tenant was to pay \$575.00 beginning August 1, 2024. However, that was based on a copy of the decision given to me by the Landlord, which was the original. When the interim decision was written, I was unaware that the November 13, 2024 decision had been corrected. At the hearing, the Landlord confirmed that the Tenant was to pay \$400.00 in rent each month.

Accepting the previous findings of the previous arbitrator under the doctrine of res judicata, meaning the matter has been decided and a tenancy was found to exist, I accept the Tenant was to pay \$400.00 each month beginning on July 1, 2024, such that rent would fall due on the first day of each month.

***1) Should the 10 Day Notice be cancelled? If not, is the Landlord entitled to an order of possession and order for unpaid rent?***

A landlord may end a tenancy under s. 46(1) of the *Act* when a tenant fails to pay rent when it is due under the tenancy agreement by serving a notice to end tenancy on the tenant that is effective no sooner than 10-days after it is received.

Under s. 46(4) of the *Act*, a tenant, upon receipt of a notice to end tenancy issued under s. 46 of the *Act*, has 5-days to either pay the overdue rent listed in the notice or file an application to dispute the notice.

If a tenant files to dispute a notice to end tenancy issued under s. 46 of the *Act* within the proscribed time limit, the onus for proving that the notice was properly issued rests with the respondent landlord.

***Service of the 10 Day Notice and Form and Content***

The Landlord testified that the 10 Day Notice was posted to the door for the rental unit on November 18, 2024. I have been provided with a copy of a signed proof of service form confirming service, as well as a picture of the 10 Day Notice taped to the door.

Accepting the Landlord's evidence, I find that the 10 Day Notice was posted to the Tenant's door on November 18, 2024. I deem under s. 90 of the *Act* that the Tenant received the 10 Day Notice on November 21, 2024.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10 Day Notice provided to me by the Landlord. I find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, sets out the grounds for ending the tenancy, and is in the approved form (RTB-30).

The effective date of the 10 Day Notice is incorrect as it was received by the Tenant on November 21, 2024. However, I find this issue is not relevant since the effective date is automatically corrected by s. 53 of the *Act* to December 1, 2024.

### Order of Possession

As noted above, the Tenant had 5 days from receipt of the 10 Day Notice to file an application to dispute it or pay the arrears.

The Landlord testified that she received no rent payments after serving the 10 Day Notice. I accept the Tenant did not pay the arrears in the 10 Day Notice within 5 days of receiving the notice or at all.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenant filed his application to dispute the 10 Day Notice on December 11, 2024. Since the 10 Day Notice was deemed received on November 21, 2024, I find that the Tenant filed his application to dispute the notice late.

The Tenant, in his application, seeks more time to dispute the 10 Day Notice. Section 66(1) of the *Act* permits me to extend a time limit established by the *Act*, but only in extraordinary circumstances. However, s. 66(3) of the *Act* stipulates that I cannot exercise this discretion when the request for a time extension is made after the effective date for the notice to end tenancy has passed.

I find I cannot grant the Tenant a time extension to dispute the 10 Day Notice even had he attended to make submissions to demonstrate extraordinary circumstances were present. The effective date of the 10 Day Notice was December 1, 2024. The Tenant's application, filed December 11, 2024, was well after the effective date of the 10 Day Notice.

Accordingly, I dismiss the Tenant's claim seeking a time extension to dispute the 10 Day Notice as his request was filed too late by application of s. 66(3) of the *Act*.

Since the Tenant failed to dispute the 10 Day Notice in time and is not permitted a time extension to do so, I find that s. 46(5) of the *Act* has been triggered, which means the Tenant is conclusively presumed to have accepted the end of the tenancy and was required to have vacated the rental unit by the effective date, being December 1, 2024, which is the date I find the tenancy ended.

Accordingly, I dismiss the Tenant's application to cancel the 10 Day Notice, without leave to reapply.

I note that even had the Tenant filed on time, I would still have found the 10 Day Notice was enforceable as I accept the Landlord's undisputed evidence that the Tenant was in arrears in rent and failed to make any payments after he was served with the 10 Day Notice. In all circumstances, I would dismiss the Tenant's application to cancel the 10 Day Notice.

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. Further, a landlord may request an order of

possession under s. 55(2)(b) of the *Act* where they have served a notice to end tenancy and the tenant has not disputed the notice within the proscribed time limit.

I find that ss. 55(1) and 55(2)(b) of the *Act* are triggered here and I grant the Landlord an order of possession.

Policy Guideline #54 provides guidance on setting the effective date for an order of possession, indicating it should generally be 7 days after it is received by a tenant. Without submissions one way or the other deviating from the standard course, I find that the order of possession will be effective 7 days after it is received by the Tenant.

#### Order for Unpaid Rent

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 the formal requirements of s. 52, then I must grant an order for unpaid rent. As that is the case here, I grant the Landlord an order for unpaid rent.

The Landlord testified, and I accept, that Tenant made payments as follows:

Month	Rent Due	Rent Paid	Arrears
July 2024	\$400.00	\$0.00	\$400.00
August 2024	\$400.00	\$400.00	\$0.00
September 2024	\$400.00	\$290.00	\$110.00
October 2024	\$400.00	\$0.00	\$400.00
November 2024	\$400.00	\$0.00	\$400.00
December 2024	\$400.00	\$0.00	\$400.00
<b>TOTAL ARREARS</b>			<b>\$1,710.00</b>

I find that the Landlord has demonstrated total arrears in unpaid rent of \$1,710.00 and shall receive an order for that amount.

Section 55(1.1) is limited to unpaid rent, being rent owed under the tenancy agreement. This is distinguished from compensation owed due to a tenant overholding a rental unit after their tenancy is over. In these circumstances, I accept that the tenancy was still active on December 1, 2024, though it was the last day of the tenancy. Despite that, rent is owed in full when due as per s. 26(1) of the *Act*, such that I find it can be treated as unpaid rent under s. 55(1.1) of the *Act*.

However, I do not grant compensation to the Landlord for January 2025 as the Landlord did not file a claim for this amount in her application and s. 55(1.1) of the *Act* does not cover compensation owed for overholding after December 1, 2024. The Landlord is at liberty to seek this amount but must do so by filing her own application to do so.

**2) Should the One Month Notice be cancelled? If not, is the Landlord entitled to an order of possession?**

As the tenancy is ending based on the 10 Day Notice, I find that whether the One Month Notice is enforceable or not is moot. The claims tied to the One Month Notice are dismissed

As a brief comment, I note that the Landlord alleges the Tenant is repeatedly late in paying rent in the One Month Notice, which is in the proper form under s. 52 of the *Act*. I accept the Tenant had been served with the One Month Notice as the Landlord confirmed it was posted to his door on November 13, 2024. I accept the Tenant received the One Month Notice as he filed to dispute it.

Given the payment history confirmed by the Landlord, which I have accepted as set out above, I would further find that the One Month Notice was enforceable due to repeated late rent payments from July, September, October, and November 2024. This exceeds the three payments suggested by Policy Guideline #38 as forming the minimum amount to constitute grounds for ending a tenancy under s. 47(1)(b) of the *Act*. Even had the Tenant filed to dispute the One Month Notice on time, which he did not, the One Month Notice would have been enforced.

## **Conclusion**

I dismiss the Tenant's claim to cancel the 10 Day Notice, without leave to reapply.

I grant the Landlord an order of possession based on the 10 Day Notice. The Tenant and any other occupant of his rental unit shall provide vacant possession of the rental unit to the Landlord within **seven (7) days** of receiving the order of possession.

I grant the Landlord an order for unpaid rent under s. 55(1.1) of the *Act* in the amount of **\$1,710.00**, which shall be paid by the Tenant.

I do not make any orders stemming from the One Month Notice, and the claims tied to this notice are dismissed. I note, however, that I would have enforced it had the tenancy not ended based on the 10 Day Notice.

As the tenancy is over, the Tenant's claims severed at the outset under ss. 43 (dispute a rent increase), 27 and 62 (provide services or facilities), 70 (restricting the Landlord's right of entry), and 62 (order that the landlord comply) of the *Act* are dismissed without leave to reapply.

The Tenant's severed claims for monetary compensation under s. 67 and a past rent reduction under s. 65 are dismissed with leave to reapply.

It is the Landlord's obligation to serve the order of possession and monetary order on the Tenant. Should the Tenant fail to comply with the order of possession, it may be enforced by the Landlord at the BC Supreme Court. Should the Tenant fail to comply with the monetary order, it may be enforced by the Landlord at the BC Provincial 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: January 10, 2025

---

Residential Tenancy Branch