

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Landlords and the Tenant under the *Residential Tenancy Act* (the Act). The Landlords' Application for Dispute Resolution, filed on December 2, 2024 (the Application), is 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 and/or utilities under section 67 of the Act
- Authorization to recover the filing fee for the Application from the Tenant under section 72 of the Act

The Tenant's Application for Dispute Resolution, filed on December 12, 2024 (the Cross Application), is for:

- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act

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

The Landlords state the Proceeding Package for the Application, including copies of the Landlords' evidence, was served to the Tenant by leaving a copy in her mailbox on December 4, 2024. The Tenant confirmed receipt of the Proceeding Package and raised no concerns regarding service. I therefore find the Proceeding Package was sufficiently served to the Tenant in accordance with section 71(2)(c) of the Act.

The Tenant states the Proceeding Package for the Cross Application, including copies of the Tenant's evidence, was sent to the Landlords by registered mail on December 20, 2024. The Landlords acknowledged receipt of the Tenant's evidence, but state they only received the first two pages of the Notice of Dispute Resolution Proceeding and, therefore, do not know the particulars of the Cross Application. Despite this irregularity in service, I am satisfied the Landlords were sufficiently served with the Tenant's Proceeding Package under section 71(2)(c) of the Act for the hearing to proceed as scheduled.

Preliminary Matters

Increased Claim for Unpaid Rent

The Landlords state that since filing the Application, the Tenant has continued to live in the rental unit and that rent for January 2025 has yet to be paid. Rule 7.12 of the Residential Tenancy Branch (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.

I find it could be reasonably anticipated by the Tenant that the Landlord would seek to increase the amount sought as compensation for unpaid rent for the month that the Tenant has continued to reside in the rental unit and I allow the Landlord to claim unpaid rent of \$5,014.57 for January 2025 in addition to the unpaid utilities sought in the 10 Day Notice in accordance with Rule 7.12. Therefore, the Landlord's Application is amended to claim unpaid rent and utilities totaling \$5,882.15.

Issues to be Decided

Are the Landlords entitled to an Order of Possession based on the 10 Day notice?

Are the Landlords entitled to a Monetary Order for unpaid utilities and rent?

Should the Landlords' One Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

Are the Landlords entitled to recover the filing fee for the Application from the Tenant?

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 parties agree this tenancy began on July 1, 2022, with a monthly rent of \$4,750.00, due on the first day of the month. The Tenant paid a security deposit of \$2,375.00 on June 29, which is held in trust by the Landlords.

The tenancy agreement does not indicate that water, electricity, heat, or natural gas are included in the monthly rent. Garbage collection and recycling services are stated as being included in the rent. Clause 7 of the Addendum to the tenancy agreement states:

The utility bills will be in the Landlord's names. They will forward the bills received without delay and the tenants agree to pay these bills before the due date and keep the accounts up to date. Any inordinate delays will be a reason for termination of the lease agreement.

The Landlords' testimony is that the 10 Day Notice was attached to the Tenant's door on November 4, 2024. The 10 Day Notice is signed by Landlord L.W., states unpaid rent of \$5,568.14 was due on November 1 and that utilities of \$867.57 are due following a written demand served to the Tenant on September 18.

The September 18, 2024 written demand for utilities submitted into evidence by the Landlord states \$977.16 is owed for outstanding BC Hydro Bills and provides the billing dates and outstanding amounts. No other utility charges or accounts are mentioned in the written demand, but the Landlords states there is currently an outstanding balance of \$147.05 owing on the FortisBC account as well as a \$1,701.00 city water bill.

The Landlords' evidence includes a Proof of Service form (#RTB-34) signed by Landlord L.W. and A.S., who witnessed service of the 10 Day Notice on November 4, 2024. A photograph of the 10 Day Notice attached to the Tenant's door is included with the Proof of Service form. The Tenant states she was not aware of the 10 Day Notice until she took the Proceeding Package for the Application to an Advocate who brought the 10 Day Notice to her attention. The Tenant did not file an application to dispute the 10 Day Notice.

The parties agree that the Tenant paid the unpaid rent stated in the 10 Day Notice within five days. The parties also agree that the Tenant paid \$80.00 towards the BC Hydro account and the FortisBC account on November 4, 2024. The Tenant's evidence includes payment confirmations from her online banking showing she also paid \$100.00 towards the BC Hydro account on November 14 and November 21, \$50.00 towards the BC Hydro account on November 29, \$98.00 towards the FortisBC account on November 14 and \$50.00 towards the FortisBC account on November 29.

The Tenant's testimony is that she did not owe the amount the Landlords claimed in the 10 Day Notice for utilities because there are amounts in dispute for which the Tenant has claimed compensation. The Tenant also states that some of the repairs she has asked the Landlords to complete have a direct impact on the amount of the utility bills. The Tenant also states the Landlords agreed to reimburse her a certain amount that she paid for an exterminator, but then deducted \$326.00 from this amount in October 2023 to apply towards the annual cost of the city garbage bin for the rental unit.

The parties agree the \$326.00 is an annual fee for the garbage bin and the Tenant has only paid this amount once. The Tenant states the Landlords owe her this amount because garbage is included in her monthly rent. The Landlords state the \$326.00 is an extra fee that they had to pay for the Tenant to be given a larger garbage bin, which she requested and was required due to the number of occupants of the rental unit and to help with the pest control issues on the property.

The Landlords' testimony is that the One Month Notice was left in the Tenant's mailbox on December 4, 2024. The Cross Application states the Tenant received the One Month Notice on December 6 and that it was left in her mailbox.

The One Month Notice is signed and dated by Landlord L.W. and provides an effective date of January 4, 2025. In the One Month Notice, the Landlords allege the Tenant has:

- Allowed an unreasonable number of occupants in the unit/property
- Repeatedly paid rent late
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Put the landlord's property at significant risk
- Caused extraordinary damage to the property
- Not done required repairs of damage to the unit/property
- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Knowingly given false information to prospective tenants or purchasers of the rental unit or property
- Assigned or sublet the rental unit/property without the landlord's written consent
- Not paid the security or pet damage deposit within 30 days as required by the tenancy agreement

The Tenant admits that her rent has not always been paid on time. The Landlords' evidence includes a written statement from Landlord L.W. stating there have been multiple occasions of bounced cheques, late payments, partial payments and non-payment of utilities in 2023 and 2024. Specifically, L.W.'s written statement says:

- February 2023 rent payment by cheque was dishonored.
- June 2023 rent payment by cheque was dishonored.
- July 2023 rent payment by cheque was dishonored.
- April 2024 rent payment by cheque was dishonored.
- July 2024 rent payment by cheque was dishonored.
- On September 4, 2024, the Tenant's rent cheque for September was dishonored and the Landlords then served a 10 Day Notice to End Tenancy for Unpaid Rent on September 18. The Tenant then paid September's rent after September 20, but the full amount owing for September utilities was not paid.
- The Tenant did not pay full rent or utilities for October 2024. The Landlords served a 10 Day Notice to End Tenancy for Unpaid Rent to the Tenant on October 28 and this amount remained outstanding until November 4
- The 10 Day Notice that was issued on November 4, 2024 for the balance of the rent due for October and monthly rent for November as well as the outstanding amount owing towards the BC Hydro account. The Tenant then paid the rent owing in three installments, but some utilities remain outstanding.

The Landlords state that, in addition to the above late rent payments, as of the date of the hearing, the Tenant had yet to pay rent for January 2025 and that, in total, the Tenant's rent payments have been late 8 or 9 times during the last two years.

The Tenant states some of the rent cheques did not clear because the Landlords did not cash them promptly. The Tenant also disagrees that the 10 Day Notices to End Tenancy for Unpaid Rent issued in September, October and November 2024 constitute

written notice that repeated late payment of rent could be grounds for the Landlords ending the tenancy for cause.

The Tenant states she lives in the rental unit with her five children, most of whom are under the age of majority, and one other person. The Tenant testified that she has cognitive difficulties and that some of her children have learning and physical disabilities.

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.

Are the Landlords entitled to an Order of Possession based on 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 RTB.

I find the 10 Day Notice meets the form and content provisions set out in section 52 of the Act. Based on the Landlords' evidence and testimony, I accept that the 10 Day Notice was posted to the Tenant's door on November 4, 2024. Under section 90 of the Act, the Tenant is deemed to have received the 10 Day Notice by November 7, being the third day after it was attached to the Tenant's door. Therefore, the Tenant had until November 12 to either pay the full amount of the arrears or dispute the 10 Day Notice.

It is undisputed that the Tenant paid the full amount of rent arrears within five days of receiving the 10 Day Notice. The Landlords states they are seeking an Order of Possession based on the 10 Day Notice with regards to the balance still owing for the unpaid utilities.

Section 46(6) of the Act permits a landlord to treat unpaid utility charges as unpaid rent for the purposes of section 46 of the Act if both:

- a) A tenancy agreement requires the tenant to pay utility charges to the landlord
- b) The utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them

I find that Clause 7 of the Addendum to the tenancy agreement does not require the Tenant to pay utility charges to the Landlords. Rather, the Tenant is required to pay the utility companies directly, and on time, upon receiving copies of the bills from the Landlords. Therefore, under section 46(6)(a) of the Act, I find the unpaid utility charges cannot be treated as unpaid rent for the purposes of section 46 of the Act and the Landlords are not entitled to an Order of Possession based on the 10 Day Notice.

The Landlords' Application for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities under sections 46 and 55 of the Act is dismissed, without leave to reapply.

Are the Landlords entitled to a Monetary Order for unpaid utilities and rent?

While I have found that the unpaid utilities referred to in the 10 Day Notice do not constitute unpaid rent for the purposes of section 46 of the Act, I find that the Landlords' Application for a monetary award under section 67 for unpaid utilities gave the Tenant sufficient particulars regarding their claim and that the Tenant had a chance to respond. I also permitted the Landlords to amend their Application to include a claim for unpaid rent for January 2025 in the amount of \$5,014.57.

Based on the evidence and submissions before me, I find that the outstanding amounts for the BC Hydro and FortisBC accounts were as follows as of the billing dates indicated:

- \$412.83 owed to BC Hydro as of November 8, 2024
- \$391.44 owed to FortisBC as of November 14, 2024

The Tenant's evidence shows that she made the below payments towards the utility accounts after the above billing dates:

- BC Hydro: \$100.00 on November 14, 2024, \$100.00 on November 21, and \$50.00 on November 29, for a total of \$250.00.
- FortisBC - \$98.00 on November 14, 2024 and \$50.00 on November 29, for a total of \$148.00

Therefore, I find the Tenant is required to pay \$162.83 towards the BC Hydro account arrears and \$243.44 towards the FortisBC account arrears.

Section 62(3) of the Act permits an arbitrator to make any order necessary to give effect to the rights, obligations and prohibitions under the Act. As the tenancy agreement provides that the Tenant is to pay the utility bills directly, I decline to grant the Landlords a monetary award with respect to the unpaid utilities set out above and instead Order the Tenant to pay the amounts owing to BC Hydro and FortisBC directly, as she has done throughout the tenancy.

I make no findings regarding the water bill or the Landlords' claim to recover the \$525.00 BC Hydro deposit that was credited to the BC Hydro account in January 2023. The Landlords are at liberty to bring an application for compensation with regards to these amounts and for any outstanding BC Hydro or FortisBC amounts that remain unpaid at the end of the tenancy.

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the evidence and submissions of the parties, I am satisfied that the Tenant is in arrears of \$5,014.57 for the month of January 2025. Therefore, I find the Landlords are entitled to a Monetary Order for unpaid rent in the amount of \$5,014.57.

I also find that the \$326.00 the Tenant was charged for the garbage bin in October 2023 constituted an overpayment of rent because the tenancy agreement states garbage collection and recycling services are included in the monthly rent.

Under section 72 of the Act, I find that the Tenant's overpayment of rent should be applied towards the arrears owing to the Landlords. I also allow the Landlords to retain the Tenant's security deposit of \$2,375.00, plus interest of \$112.61, in partial satisfaction of the monetary award under section 72 of the Act.

Should the Landlords' One Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47(4) of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the RTB. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

I am satisfied that the One Month Notice was served to the Tenant on December 4, 2024 by leaving it in her mailbox, and the Tenant acknowledges receiving the One Month Notice on December 6. The Tenant filed the Cross Application on December 12. I find that the Tenant applied to dispute the One Month Notice within the required time. Therefore, no conclusive presumption applies under section 47(5) of the Act and the Landlords have the burden to prove that they have sufficient grounds to end the tenancy under section 47 of the Act by way of the One Month Notice.

1) Repeated Late Payment of Rent

Evidence was presented during the hearing that rent was paid late for three months in 2023 and that, in 2024, rent was late for the months of April, July, September, October and November. As found above, rent was also late for January 2025. The Tenant admits her rent is not always paid on time.

Section 47(1)(b) of the Act explains that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Policy Guideline #38 provides guidance on what is to be considered when examining the issue of repeated late payments of rent as follows:

Three payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late

payments...In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Section 26(1) of the Act states that rent must be paid when it is due under the tenancy agreement. In this case, rent was due on the first of the month and rent for September, October and November 2024 was not paid until after the Landlords served the Tenant with 10 Day Notices for Unpaid Rent.

I find that the Tenant has been repeatedly late paying rent more than three times in the last five months and that this is sufficient to meet the requirements set out in section 47(1)(b) of the Act. I therefore find that the Landlords are entitled to an Order of Possession based on this ground of the One Month Notice.

2) Breach of a Material Term of the Tenancy Agreement

The One Month Notice also states the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Policy Guideline #8 states:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.... The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question.

As noted earlier, Clause 7 of the Addendum to the tenancy agreement regarding the payment of the utility bills states that “the tenants agree to pay these bills before the due date and keep the accounts up to date. Any inordinate delays will be a reason for termination of the lease agreement.”

Based on the wording of Clause 7 and the consequences to both parties of the Tenant's failure to keep the utility accounts in good standing (i.e. suspension of services for the Tenant and the Landlords having overdue accounts in their names), I find the requirement for the Tenant to pay the utility bills on time and keep the accounts current constitutes a material term. I am satisfied that this term is sufficiently important to the tenancy agreement that a breach of the term gives the Landlords the right to terminate the tenancy.

I further find that the Tenant had been given multiple written warnings regarding the overdue utility accounts that culminated in the Landlords' written demand dated September 18, 2024, and inclusion of the overdue BC Hydro account in the 10 Day Notice. That this issue was not corrected within a reasonable time is evidenced by the fact that the utility bills still have yet to be paid in full, and that the Landlords received a final disconnection notice from BC Hydro on September 20, stating the service would be disconnected if the balance owing was not paid immediately.

Therefore, I find that the overdue and outstanding unpaid utility accounts constitute a breach of a material term of the tenancy and that this is sufficient to meet the requirements set out in section 47(1)(h) of the Act. I therefore find that the Landlords are entitled to an Order of Possession based on this ground of the One Month Notice.

I therefore find that the Landlords have shown, on a balance of probabilities, that they had sufficient grounds to end the tenancy due to both the Tenant's repeated late payment of rent and breach of a material term of the tenancy agreement, as stated in the One Month Notice. I make no findings regarding the remaining grounds for ending the tenancy as stated in the One Month Notice.

The Tenant's Cross Application to cancel the One Month Notice is dismissed, without leave to reapply and the Landlords are entitled to an Order of Possession.

Policy Guideline #54 sets out factors to consider in determining the effective date of an order of possession. I find that the relevant factors in the present case are as follows:

- Rent has not been paid for January 2025 and the utility accounts are overdue
- The Tenant has resided in the rental unit for 2.5 years
- The Tenant has five children residing with her, four of whom are under the age of majority, and some of whom have medical conditions, physical disabilities and learning disabilities

Policy Guideline #54 states that the effective date for orders of possession, when the effective date of the notice to end tenancy has already passed, have generally been set for seven days after the order is received. Further, it states that the arbitrator has the discretion to set the effective date of the order of possession based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

In the Landlords' closing submissions, it was stated the Tenant owns a recreational vehicle (RV) and that there are spaces available in local manufactured home or RV sites where the Tenant could relocate. However, I do not accept this to be a realistic living arrangement for the Tenant and her five children.

Therefore, to balance the interests of both parties and in consideration of all the circumstances listed above, I grant the Landlords an Order of Possession effective at 1:00 PM on February 28, 2025. I further find that the tenancy will end on this date, per section 44(1)(f) of the Act.

Are the Landlords entitled to recover the filing fee for the Application from the Tenant?

As the Landlords were partially successful in the Application, I allow their request to recover the \$100.00 filing fee from the Tenant under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlords **effective by 1:00 PM on February 28, 2025, 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 Landlords a Monetary Order in the amount of **\$2,300.96** under the following terms:

Monetary Issue	Granted Amount
A Monetary Order for unpaid rent under section 67 of the Act	\$5,014.57
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	-\$2,375.00
Amount of interest owed on security deposit from June 29, 2022 to the date of this Order	-\$112.61
Overpayment of rent to be applied towards arrears under section 72 of the Act	-\$326.00
Authorization to recover the filing fee for the Application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$2,300.96

The Landlords are 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).

The Landlords' Application for an Order of Possession based on the 10 Day Notice under sections 46 and 55 of the Act is dismissed, without leave to reapply.

Tenant's Cross Application for cancellation of the One Month Notice under section 47 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 9, 2025

Residential Tenancy Branch