

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) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing 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 recover the filing fee for this application from the Tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord acknowledged receipt of the Tenant's Proceeding Package and I find them to have been duly served in accordance with the Act.

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Service of Evidence

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Preliminary Matters

The Landlord sought to increase their monetary claim to reflect the Tenant's failure to pay rent for December and January as well.

Residential Tenancy Branch Rules of Procedure, Rule 7.12, 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 allow the amendment as this was clearly rent that the Tenant would have known about and resulted since the Landlord submitted the application.

Issues Severed

The Tenant applied for a rent reduction and for completion of repairs. I informed the parties at the outset that pursuant to Residential Tenancy Branch Rule of Procedure 6.2, which provides that an arbitrator may use their discretion to dismiss unrelated claims, I would be dismissing these claims to ensure that the most urgent claims were heard.

In the circumstances, I determined the most urgent claims to be:

- Whether the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent should be upheld or cancelled;
- Whether the Tenant is entitled to an order suspending or set conditions on the Landlord's right to enter the rental unit; and
- Whether the Tenant should be authorized to change the locks to the rental unit.

As a result, the following claims are dismissed with leave to reapply:

- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act

In dismissing these claims, I note that there was no suggestion by the Tenant during the hearing that she was authorized by either the Landlord or the Residential Tenancy Branch to withhold rent at the time that the 10 Day Notice was issued for any reason.

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 Tenant entitled to more time to cancel the Landlord's One Month Notice?

Is the Tenant entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit or site?

Is the Tenant entitled to an order authorizing them to change the locks to the rental unit?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

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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.

Evidence was provided showing that this tenancy began on November 15, 2024, with a monthly rent of \$2,7000.00, due on the first day of the month.

Security Deposit

The parties agree that the Tenant made two payments toward her security deposit. The first was for \$700.00, on October 25, 2024. The second was for \$600.00, on November 2, 2024. The parties agree that the Tenant owed an additional \$50.00 with respect to her security deposit under the terms of her tenancy agreement. The Tenant was also required to pay a pet deposit of \$150.00 under the terms of the tenancy agreement which the parties agreed was not paid.

Unpaid Rent

A 10 Day Notice to End Tenancy for Unpaid Rent was delivered to the Tenant in person on December 1, 2024. On the Notice, the Landlord indicated that the Tenant failed to pay rent in the amount of \$1,350.00 for the period spanning November 15 through November 30, which was due on November 15, 2024.

While the Tenant argued that she had made a payment in the amount of \$1,300.00 on November 18, 2024, she agreed that she did not pay the full amount of the arrears, which was \$1,350.00. While the Landlord denied receiving \$1,300.00 on November 18, 2024, both parties agreed that the Tenant did not make another payment to the Landlord until January 1st or 2nd 2025, when she paid him \$1,200.00

The Tenant applied for dispute resolution on December 11, 2024. In her application the Tenant requested more time to dispute the notice. During the hearing the Tenant said that she was late in applying for dispute resolution due to the fact that she has leukemia and has been undergoing chemotherapy. She said that she is required to attend many doctor appointments and is often quite ill as a result of the treatments.

Conditions re Landlord entry; Change of Locks

During the hearing the Tenant stated that she was seeking conditions with respect to the Landlord's right to enter the rental unit as he had opened her garage door, entered the garage, and proceeded to knock on her door. She said that when she opened it, he was standing there with another person and that this made her feel unsafe. She said that he should not be allowed to just show up at the rental unit unannounced.

The Tenant also indicated that text messages sent by the Landlord left her feeling unsafe.

The Landlord replied that before he left Vancouver to attend the rental unit in Penticton, he called the Tenant to let her know that he would be going there to provide her with a notice pertaining to the unpaid rent. He said that he then went to the front door, handed her the 10 Day Notice to end tenancy, and that the individual that was present is that painter who works on site who had agreed to act as his witness for service of this document. He said that she proceeded to open the garage to show him the items that she wanted removed. He said that he looked at the contents but did not enter the garage.

The Tenant agreed that the Landlord served her with the notice on the occasion described. She agreed that he had not entered the habitable portion of the rental unit at any time.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

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

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).

A 10 Day Notice was delivered to the Tenant in person on December 1, 2024. I find that the Tenant was served on December 1, 2024, and that the Tenant had until December 6, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears.

Extension of Time Limit

The Tenant applied for dispute resolution on December 11, 2024. In her application the Tenant requested more time to dispute the notice. Section 66 of the Act states that the director may extend a time limit established by the Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the notice. In this case the effective date of the notice was December 11, 2024.

Residential Tenancy Branch Policy Guideline #36 indicates that the word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling.

I find that there are exceptional circumstances which warrant an extension of the time limit. In reaching this conclusion, I have accepted the Tenant's explanation that medical circumstances prevented her from disputing the notice in a timely manner.

I further note that the Tenant's dispute of the notice was on December 11, 2024, which was not beyond the effective date of the notice.

In light of the foregoing, I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Unpaid Rent

While the Tenant argued that she had made a payment in the amount of \$1,300.00 on November 18, 2024, she agreed that she did not pay the full amount of the arrears, which was \$1,350.00. While the Landlord denied receiving \$1,300.00 on November 18, 2024, both parties agreed that the Tenant did not make another payment to the Landlord until January 1st or 2nd 2025.

In consideration of the foregoing, I find that the Tenant did not pay the full amount of the arrears by December 11, 2024, the effective date of the Notice.

For the above reasons, 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.

Is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?

Section 55(1) of the Act states that if a Tenant makes an application to set aside a Landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the Landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession.

Residential Tenancy Branch Policy Guideline #54 outlines a number of factors that an arbitrator may consider when determining the effective date of an order of possession. Some examples are the point up to which the rent has been paid and the length of the tenancy.

I grant an Order of Possession to the Landlord effective by 1:00 PM on January 31, 2025. In reaching this conclusion, I am not unsympathetic to the Tenant's medical circumstances. However, I note that the tenancy only commenced November 15, 2025, less than two months ago, and as indicated later in this Decision, the Tenant paid no rent for the first six weeks. The Tenant has accrued significant arrears, and I accept that the Landlord is experiencing significant financial difficulties as a result.

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

Section 55(1.1) of the Act states that if a Tenant makes an application to set aside a Landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the Landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

While the Tenant argued that she had made a payment in the amount of \$1,300.00 on November 18, 2024, the Landlord insisted that she had not. The Landlord claimed that the Tenant had sent him copies of the two transfers first made on October 25th and November 2nd and that she had insisted that these were additional payments. The Landlord said that the Tenant was attempting to deceive him and that he had told her at the time to provide him with any banking documentation that would demonstrate that she had made these additional payments as he had certainly not received them. The Landlord provided copies of his own banking documentation which showed his receipt of the first two payments from the Tenant but nothing from her thereafter.

In her evidence, the Tenant provided copies of four documents indicating etransfers to the Landlord. Two of these payments were for \$600.00 and the other two were for \$700.00. Although the Tenant said that these were four separate payments, my review of them indicated that they were two payments that had been provided twice. While the duplicate payments were not at all identical, they possessed identical reference numbers and dates.

While the Tenant insisted that there must be an error with the uploads and that she had documentation with different reference numbers in front of her, I find, on a balance of

probabilities, that the Tenant did not make the additional payments totaling \$1,300.00 on November 18, 2024, as alleged. In reaching this conclusion, I have found the Landlords testimony and banking documentation to be persuasive. I also find the Tenant's credibility to be undermined by the fact that the Tenant has clearly uploaded the same two payments twice, and in different formats, which create the appearance that they are indicative of four payments rather than two.

Therefore, I find the Landlord it was established that they are owed rent in the amount of \$5,550.00, calculated as follows:

Date Due	Amount Due
Nov. 15	\$1,350.00
Dec. 1	\$2,700.00
Jan. 1	\$2,700.00
Subtotal Total	\$6,750.00
Jan 1 Payment	\$1,200.00
Total	\$5,550.00

The Landlord continues to hold the Tenant's security deposit of \$1,300.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain the Tenant's security deposit in partial satisfaction of the monetary orders.

Is the Tenant entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit or site?

I find that the Tenant has failed to establish that she is entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit. In reaching this conclusion, I have preferred the Landlord's evidence which was that he had notified the Tenant that he would be attending prior to his arrival. I also accept that there was a legitimate reason for his attendance to the rental unit, her failure to pay rent in full when it was due. Finally, I note that there is no indication that he entered the habitable portion of the rental unit and have preferred the Landlord's testimony which was that he did not enter the garage without permission. I find, on a balance of probabilities, that it was the Tenant who opened the garage for the purpose of having the Landlord remove the materials that had been left it there.

While the Tenant also indicated that text messages sent by the Landlord left her feeling unsafe. I accept that the Landlord's communications became increasingly disrespectful and profanity laced as weeks passed with the Tenant failing to pay her entire security deposit or any rent. However, I find that the messages are not indicative of any specific threat to her.

For the above reasons, the Tenant's application for an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act is dismissed, without leave to reapply.

Is the Tenant entitled to an order authorizing them to change the locks to the rental unit?

Further to my finding that the Tenant has failed to establish that she is entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit, and for the same reasons, the Tenant's application for an order to change the locks to the rental unit under section 70(2) of the Act is dismissed, without leave to reapply.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

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.

I grant an Order of Possession to the Landlord **effective by 1:00 PM on January 31, 2025, after service of this Order on the Tenant(s)**. Should the Tenant(s) 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 **\$4,350.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$5,550.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
retention of Tenant's security deposit in partial satisfaction of the Monetary Order requested in accordance with off-setting provisions of section 72 of the Act	-\$1,300.00

	Total Amount	\$4,350.00
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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 an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act is dismissed, without leave to reapply.

The Tenant's application for authorization to change the locks to the rental unit under section 70(2) 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 10, 2025

Residential Tenancy Branch