



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act). The Tenant's application for:

- Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under section 46 of the Act

And the Landlords' application for:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent under section 46 of the Act
- A Monetary Order for unpaid rent
- Reimbursement of the filing fee

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

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

As both parties confirmed service of the Proceeding Package and documentary evidence, I find both parties were served with the required materials in accordance with the Act.

Preliminary Matters – Amendment

At the hearing the Landlord sought to amend their application to include a claim for increased rent which Family Member MS testified remains outstanding.

Rule of Procedure 7.12 states:

7.12 Amending an application at the hearing

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.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the Landlord is seeking compensation for unpaid rent that has increased since they first applied for dispute resolution, I find that the increase in the Landlord's claim should have been reasonably anticipated by the Tenant. Therefore, pursuant to Rule 7.12, I order that the Landlord's application to be amended to include a claim for unpaid rent due on December 1, 2024 (\$1,600.00) and January 1, 2025, (\$1,600.00), for the total amount of \$3,200.00.

Issue(s) 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 Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to recover the filing fee?

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 Tenant testified that this tenancy began on August 15, 2019. MS testified that this tenancy began on August 15, 2022. Both parties agreed that there was no written tenancy agreement.

Both parties agreed that the monthly rent of \$1,600.00 is due on the first day of each month. The Tenant stated that on August 15, 2019, they paid a security deposit in the amount of \$400.00. MS testified that on August 15, 2019, the Tenant paid a security deposit of \$200.00 and, thereafter, the Tenant applied this amount towards the rent payment for the first month of the tenancy.

On December 8, 2024, the Landlord served by attaching a copy to the Tenant's door the 10 Day Notice. The 10 Day Notice was submitted in evidence. The 10 Day Notice dated

December 8, 2024, has the effective date of December 31, 2024. The 10 Day Notice indicates failure to pay rent of \$19,200.00 due on December 1, 2024.

MS testified that the Tenant last paid rent due on November 1, 2023. MS testified that the Tenant failed to pay rent due on the first day of the month for the period of 14 months, from December 2023 to January 2025. The Landlord is seeking unpaid rent of \$22,400.00, \$1,600.00 per month x 14 months, from December 2023, to January 1, 2025.

MS testified that the Tenant made rent payments by cash, and the Landlord did not provide receipts for these payments.

MS testified that the Tenant failed to pay rent in December 2023 and provided to the Landlord a form (the SA Form) for social assistance purposes. MS stated that the Tenant was only to receive \$1,100.00 from social assistance. MS testified that the Tenant did not agree to pay the difference of \$500.00 to equal monthly rent of \$1,600.00. MS testified that the Landlord returned to the Tenant the SA Form with no signature. MS stated that the Landlord informed the Tenant of their reason or refusal to sign the SA Form, and asked the Tenant to end the tenancy given they could not pay rent in the amount of \$1,600.00 per month. MS stated that the Tenant refused to leave and they failed to pay rent.

The Tenant testified that the Landlord never provided to them receipts for payment of the security deposit and payment of monthly rent. The Tenant stated that during the first year of the tenancy, the Landlord restricted laundry facilities that were included in the tenancy. The Tenant stated that they withheld rent until the Landlord agreed to reinstate the laundry facilities.

The Tenant testified that in March 2020, the Landlord again refused them access to the laundry, and they responded by refusing to pay rent. The Tenant testified that the parties resolved this issue in 2020, at which time they resumed paying monthly rent and paid all outstanding rent.

The Tenant testified that they were unemployed as of December 2023, and relied on social assistance. The Tenant testified that they provided to the Landlord the SA Form, which the Landlord refused to sign. The Tenant testified that there contact from the social assistance office called the Landlord, however, they did not answer or return the calls. The Tenant stated that the Landlord failed to take action, did not provide the required information, such as rental details or a tenancy agreement, to social assistance.

The Tenant testified that they paid monthly rent of \$1,600.00 due on December 1, 2023. The Tenant testified that they relied on social assistance effective January 2024, and that they did not pay monthly rent from January 2024 to January 2025, for the total of 13 months.

Analysis

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).

I find that the 10 Day Notice was duly served to the Tenant on December 8, 2024, and that the Tenant had until December 13, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenants filed their dispute on December 11, 2024, within the five day period as per the Act.

The Tenant admitted they did not pay rent for the period of 13 months, from January 2024 to January 2025, and I find they did not provide a lawful reason to withhold rent. Although the Tenant stated that they withheld rent as the Landlord failed to sign the SA Form, I find the Landlord was under no obligation to sign the form for monthly rent of \$1,100.00. In this case, the Landlord provided their reasoning and concerns, and I would expect the Tenant to respond to them regarding continued with rent payments. I find the Tenant violated Section 26 of the Act, which requires that rent be paid on the date that it is due.

As the Tenant failed to pay rent and did not demonstrate a lawful reason to withhold rent, I find the Landlord had reason to give to the Tenant the 10 Day Notice. I dismiss the Tenant's application for cancellation of the Landlord's 10 Day Notice under section 46 of the Act.

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 the 10 Day Notice complies with section 52 of the Act.

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

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. As noted earlier in this decision, I find the 10 Day Notice complies with section 52 of the Act.

I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$20,800.00 (\$1,600.00 per month x 13 months, from January 2024 to January 2025). I decline to award \$1,600.00 for unpaid rent for December 2023 due to insufficient evidence. With no written tenancy agreement, no record of transactions or receipts, I find the Landlord did not provide sufficient documentary evidence to substantiate their claim for unpaid rent due on December 1, 2023.

Is the Landlord entitled to recover the filing fee?

As the Landlord was successful in their application, I grant the Landlord the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

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 **\$20,900.00** under the following terms:

Monetary Issue	Granted Amount
A Monetary Order for unpaid rent under section 55 of the Act	\$20,800.00
To recover the cost of the filing fee	\$100.00
Total Amount	\$20,900.00

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** to be enforceable. 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)

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 14, 2025

Residential Tenancy Branch