

DECISION

Introduction

This hearing 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 retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also 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
- 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)

I find that the Tenant was deemed served on December 22, 2024, by posting it to the door of the rental unit, in accordance with section 89(1) of the Act. Proof of service form was provided.

The Landlord's agent T.C. (the Landlord's Agent) argued they only received a copy of the Proceeding Package from the Tenant the day of the hearing. The Tenant argued they provided the Proceeding Package to the building manager a few weeks ago but could not provide an exact date. Also, the Tenant did not provide a proof of service form. The Landlord was prepared to proceed as such, the hearing took place.

Service of Evidence

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

No evidence was received from the Tenant.

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 Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Is the Tenant entitled to more time to cancel the Landlord's 10 Day Notice?

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

Is the Landlord entitled to recover the filing fee for this 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.

Evidence was provided showing that this tenancy began on November 1, 2021, with a monthly rent of \$1,907.59, due on the first day of the month, with a security deposit in the amount of \$875.00.

The Landlord is seeking an Order of Possession, Monetary Order, and authorization to retain the security deposit based on a 10 Day Notice for Unpaid Rent. The Tenant applied for more time to dispute the 10 Day Notice for Unpaid Rent, and to dispute a One Month Notice for Cause.

10 Day Notice

The Landlord's position is that the 10 Day Notice for Unpaid Rent was posted on the Tenant's door December 3, 2024, and was for unpaid rent of \$2,004.18 (the 10 Day Notice). The 10 Day Notice has an effective date of December 16, 2024. The Landlord's Agent argued the 10 Day Notice was issued for unpaid rent for December 2024 and the unpaid rent increase from previous months. The Landlord's Agent argued the Tenant made payments on December 18, 2024, and December 31, 2024, and currently does not owe any rent. The Landlord provided a letter issued to the Tenant for "use and occupancy only" for the rent payments made in December 2024.

The Tenant filed their application on December 24, 2024. The Tenant was asked why they were late disputing the 10 Day Notice and argued they were not late disputing and

they do not need more time to dispute. The Tenant's application stated they received the 10 Day Notice on December 3, 2024, and the Tenant confirmed this date earlier in the hearing. The Tenant then changed their answer and argued they received the 10 Day Notice 10 days after December 3, 2024. The Tenant also argued they received another notice for eviction prior to the 10 Day Notice but could not recall what the document was or when they received that document. The Tenant argued they paid the unpaid rent within the deadline but could not recall what date they paid the unpaid rent.

One Month Notice

The Landlord served the One Month Notice for Cause on December 16, 2024, and the reason of cause selected was the Tenant was repeatedly late paying rent (the One Month Notice). The Landlord's Agent argued the Tenant was late paying rent the last 4 months in December 2024. The Landlord's Agent advised the Tenant was given 10 Day Notices for Unpaid Rent when rent was late and that the Tenant was aware rent needed to be paid on the 1st of the month.

The Tenant argued they were late paying rent but because the Tenant was not given clear communication about what amount was owed for rent. The Tenant argued the Landlord has allowed the Tenant to pay late in the past.

Analysis

Are the Tenants Entitled to More time to Cancel the Landlord's 10 Day Notice?

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenants 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 tenants 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).

The parties have provided different dates, the 10 Day Notice was served; however, after considering the credibility of both parties, I prefer the evidence and testimony of the Landlord's Agent. The Tenant provided conflicting and unclear testimony about the date they received the 10 Day Notice. The Tenant's application stated they received the 10 Day Notice on December 3, 2024, and originally the Tenant confirmed they received the 10 Day Notice on December 3, 2024, but then changed their answer to December 13, 2024. The Tenant also provided conflicting testimony about receiving an eviction notice before receiving the 10 Day Notice but could not recall what notice they received or what date they received it. In comparison, the testimony of the Landlord's Agent remained consistent throughout the hearing that the 10 Day Notice was served December 3, 2024.

I find that the 10 Day Notice was duly served to the Tenant on December 3, 2024, and that the Tenant had until December 8, 2024, to dispute the 10 Day Notice or to pay the full amount of arrears.

The Tenant has applied for dispute resolution requesting more time to cancel a notice to end tenancy. 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.

The effective date on the 10 Day Notice was December 16, 2024, and the Tenant made their application for dispute resolution for more time on December 24, 2024, which is after the effective date of the 10 Day Notice. Even if the Tenant could establish grounds that meet the requirements of exceptional circumstances, I cannot grant an extension of time once the effective date of the 10 Day Notice has passed. Additionally, even if an extension was granted the Tenant has not established a legal reason for withholding rent. As such, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy under section 46(5).

Additionally, while the Tenant has paid the unpaid rent, these payments were not made within 5 days of receiving the 10 Day Notice. The Landlord's Agent advised the Tenant made payments on December 18, 2024, and December 31, 2024. I do not accept the Tenant's argument that they paid within the 5-day requirement, as the Tenant could not recall the dates they made the payments. I find that the payments made by the Tenant were made past the effective date of the 10 Day Notice.

For the above reasons, the Tenant's application for cancellation of the 10 Day Notice and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 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 10 Day Notice complies with section 52 of the Act.

Therefore, I find that the Landlord is entitled to an Order of Possession. I grant the Landlord's application for an Order of Possession based on the 10 Day Notice.

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

Given that I have ended the tenancy under the 10 Day Notice, I find that it is not necessary to consider the One Month Notice.

For the above reasons, the Tenant's application for cancellation of One Month Notice under section 47 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. I authorize the Landlord to deduct \$100.00 from the Tenant's security deposit, to recover the filing fee.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Given that the Tenant does not owe any unpaid rent, the Landlord is not entitled to retain the security deposit for unpaid rent. However, the Landlord is authorized to retain \$100.00 of the security deposit to recover the filing fee.

Conclusion

The Tenant's application is dismissed in its entirety, without leave to reapply.

I grant an Order of Possession to the Landlord **effective 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.

The Landlord is authorized to retain \$100.00 of the Tenant's security deposit to recover the filing fee.

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 13, 2025