

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) under sections 46 and 55 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- an order requiring the Landlord to comply with the Act, regulation, or tenancy agreement under section 62 of the Act

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- for an Order of Possession
- for a monetary order for unpaid rent
- to recover the cost of the filing

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to and make submissions at the hearing.

Preliminary Issue

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant request that the Landlord provide services or facilities required by the tenancy agreement or law.

However, this is not sufficiently related to 10 Day Notice, as this would not be grounds under the Act to withhold rent. I will, therefore, only consider the tenant's request to set aside the 10 Day Notice. The remaining issue is dismissed, with leave to reapply; however, this is only relevant should the tenancy continue.

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

Neither party raised any issues with the service of the Proceeding Package.

Issues to be Decided

Should the 10 Day Notice be cancelled or is the Landlord entitled to an Order of Possession based on unpaid rent?

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

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 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.

The tenancy began under a fixed term tenancy that began on November 1, 2024, and was to expire on October 31, 2025, with a monthly rent of \$4,900.00, due on the first day of the month, with a security deposit in the amount of \$2,450.00.

The parties agreed that the Tenant was served with a 10 Day Notice on December 13, 2024. The Tenant acknowledged at the hearing that the Landlord has not received the rent for December 2024 or January 2025.

The Tenant stated that they attempted to pay rent and even offered the Landlord an extra thousand dollars in interest; however, they would not accept it. The Tenant stated that the Landlord just not want to rent the premises.

The Tenant stated that they make a good income, and they have more than sufficient funds to pay rent. The Tenant provided an incomplete bank statement; however, it shows the Tenant is alleged to have \$18,06.03 in the bank as of January 1, 2025

The Landlord stated that they neve refused rent. They told the Tenant they just wanted the rent paid. The Landlord stated that the Tenant was also given other options on how to pay the rent, other than the PAD system, such as etransfer, or by cash. However, the Tenant has not paid.

Analysis

Is the Landlord 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

Residential Tenancy Branch. If the tenant does 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 served to the Tenant on December 13, 2024, which was deemed to be served three days later, December 16, 2024, and that the Tenant had until December 21, 2024, to dispute the 10 Day Notice or to pay the full amount of arrears. The Tenant application was filed on December 21, 2024, and when filing fee was waived.

Under the legislation a tenant may dispute the 10 Day Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the Tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the Tenant's application had no merit as the Tenant admitted rent was not paid within 5 days after receiving the 10 Day Notice.

I do not accept the Tenants testimony that the Landlord does not want to rent the rental unit. That is unreasonable and logical when the Landlord had just entered into a fixed term agreement. I do not accept the Tenant made any true attempt to pay the rent as they acknowledged they could have sent an etransfer or pay cash, put did not do so.

Further, the Tenant claimed in their application that rent has been paid and will be paid on-time moving forward. This was untrue as rent for December 2024, and subsequent rent January 2025, was not paid. I find the tenant breached the Act when they failed to pay the rent. Therefore, I dismiss the Tenant's application is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlord **effective 7 days 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.

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

As the Tenant has not paid rent for December 2024 and subsequent rent for January 2025, I find the Tenant owes the Landlord **\$9,800.00**. I authorize the Landlord to keep the security deposit of \$2,450.00 to offset the amount owed by the Tenant, leaving a balance due of **\$7,350.00**.

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 find the Landlord has established a monetary claim of \$9,900.00 comprised of the above amounts. I authorize the Landlord to keep the security deposit of \$2,450.00 to offset the amount owed by the Tenant, leaving a balance due of **\$7,450.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The Tenant's application is dismissed. **The Tenant is cautioned** that if have developed a pattern of unpaid rent. They may be referred to the Compliance and Enforcement Unit for investigation.

I grant an Order of Possession to the Landlord **effective 7 days, 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 an order for unpaid rent. I authorize the Landlord to keep the security deposit in partial satisfaction of their claim. I grant the Landlord a formal Monetary Order for the balance due. This Order may be filed and enforced as an Order of the Provincial Court (Small Claims) of British Columbia.

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 24, 2025

Residential Tenancy Branch