

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

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 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Landlord said that they did not receive the proceeding package from the Tenant, adding that they only learned of the hearing in the course of their communications with the Residential Tenancy Branch about their own application.

I find that the Landlord was nonetheless aware of all aspects of the claim, which consisted entirely of a dispute of the Landlord's Notice to End Tenancy for Unpaid Rent, and that the Tenant's Proceeding Package was sufficiently served to the Tenant for the purposes of section 71 (2)(b) the Act.

The Landlord said that they served the Tenant with their proceeding package via registered mail at the same time as their proceeding package and provided a copy of the tracking number and receipt. I find that the Landlord's proceeding package was served to the Tenant in accordance with the Act.

Service of Evidence

The Landlord said that they did not receive any evidence from the Tenant. I note that the Tenants did not submit any evidence to the Residential Tenancy Branch for consideration.

The Landlord said that they served the Tenant with their evidence via registered mail at the same time as their proceeding package and provided a copy of the tracking number and receipt. I find that the Landlord's evidence was served to the Tenant in accordance with the Act.

Preliminary Matters

Tenant Absent

The Tenant did not attend the hearing. If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party pursuant to rule of procedure 7.3.

I conducted the dispute resolution hearing in the absence of the Tenant. I decided to proceed with the hearing having already determined the Tenant was served with the notice of dispute resolution hearing.

Increase Rent Claim

The Landlord sought to increase their monetary claim to reflect the Tenant's failure to pay rent for 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 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 for this application from the Tenant?

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

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 July 15, 2024, with a monthly rent of \$8,966.00, due on the first day of the month. The Landlord holds the Tenant's security deposit of \$4,483.00.

A 10 Day Notice was delivered to the Tenant via email on December 11, 2024, to an email address that the Tenant provided for service. In it, the Landlord requested an order of possession and then monetary order in relation to unpaid rent. The Landlord claimed that they only received \$5,500.00 with respect to rent for the month of December. At the hearing they added that they had not received any payment for the month of January.

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).

A 10 Day Notice was delivered to the Tenant via email on December 11, 2024, to an email address that the Tenant provided for service. I deem the Tenant to have been served on December 14, 2024, and that the Tenant had until December 19, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The Tenant disputed the notice was on December 20, 2024, which was within the time permitted. I find therefore that the Landlord has the burden to prove that they had sufficient grounds to issue the 10 Day Notice.

The Tenant did not attend. The Landlord's undisputed evidence was that they only received \$5,500.00 with respect to rent for the month of December, and nothing for the month of January. The Landlord's total claim was therefore \$12,432.00 (\$3,466.00 + \$8,966.00). I find that the Landlord is owed unpaid rent in the amount \$12,432.00.

In consideration of the foregoing, I find that the Tenant did not pay the full amount of the arrears by December 19, 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.

I grant an Order of Possession to the Landlord effective by 1:00 PM on January 31, 2025.

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.

As previously indicated, the Landlord's undisputed evidence was that they only received \$5,500.00 with respect to rent for the month of December, and nothing for the month of January. The Landlord's total claim was therefore \$12,432.00 (\$3,466.00 + \$8,966.00). I find that the Landlord is owed unpaid rent in the amount \$12,432.00.

The Landlord continues to hold the Tenant's security deposit of \$4,483.00 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 plus interest in the amount of \$58.55 in partial satisfaction of the monetary orders.

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 **\$7,990.45** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$12,432.00
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 plus interest in partial satisfaction of the Monetary Order requested in accordance with off-setting provisions of section 72 of the Act	-\$4,541.55
Total Amount	\$7,990.45

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.

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 20, 2025

Residential Tenancy Branch