Dispute Resolution Services
Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

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

- Cancellation of the Landlords' One Month Notice to End Tenancy for Cause under section 47 of the Act
- An order requiring the Landlords to comply with the Act, regulation or tenancy agreement under section 62 of the Act

This hearing also dealt with the Landlords' 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 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)

I find that the Landlords were served on January 3, 2025, by registered mail, in accordance with section 89(1) of the Act. Proof of service forms and Canda Post tracking numbers were provided.

I find that the Tenant was served on January 13, 2025, in person, in accordance with section 89(1) of the Act. Proof of service form was provided.

Service of Evidence

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

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Issues to be Decided

Are the Landlords entitled to an Order of Possession based on the 10 Day Notice?

Are the Landlords entitled to a Monetary Order for unpaid rent?

Should the Landlords' One Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

Are the Landlords 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 July 1, 2024, with a monthly rent of $1,600.00, due on the first day of the month, with a security deposit in the amount of $800.00.

The Tenant is disputing a One Month Notice for Cause, and the Landlords have applied for an Order of Possession and Monetary Order based on a 10 Day Notice for Unpaid Rent.

10 Day Notice

The Tenant was served a 10 Day Notice for Unpaid Rent on January 2, 2025, for $1,600.00 (the 10 Day Notice). A copy of the 10 Day Notice was provided as evidence. The Tenant uploaded a copy of the 10 Day Notice to their application but never filed a new dispute or an amendment to dispute the 10 Day Notice. The Tenant advised that they do owe the Landlords money for rent and that they uploaded a copy of the 10 Day Notice because the online application required them to. The Tenant did not indicate that they intended to dispute the 10 Day Notice and there is no evidence that the Landlords were informed of the Tenant disputing the 10 Day Notice.

The Landlords' position is that the Tenant did not pay rent for January 2025 and then did not dispute or pay the full amount within the timeframe required. The Landlords advised the Tenant paid $600.00 around January 16, 2025, but still owes $1,000.00 towards January 2025 rent.

The Tenant's position is that they did not pay the full amount of January 2025 rent because they needed the money for a damage deposit if they found a new place to rent. The Tenant confirmed they only paid $600.00 towards January 2025 rent and still owes $1,000.00.

One Month Notice

The Landlords served a One Month Notice for Cause on December 30, 2024, and indicated the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord (the One Month Notice). The Tenant disputed the One Month Notice on December 31, 2024. A copy of the One Month Notice was provided as evidence.

The Landlords' position is that around December 2024, the Tenant has consistently created disturbances, including banging and yelling.

The Tenant's position is that there was an incident of noise in December 2024, but since that incident the Tenant is not aware of where this noise disturbance is coming from.

Analysis

Are the Landlords 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 deemed served to the Tenant on January 7, 2025, and that the Tenant had until January 12, 2025, to dispute the 10 Day Notice or to pay the full amount of the arrears.

The Tenant uploaded a copy of the 10 Day Notice, but never submitted an application or an amendment to dispute the 10 Day Notice. Additionally, the Landlords were never aware the Tenant was disputing the 10 Day Notice. During the hearing the Tenant testified that they were required to upload the 10 Day Notice as a part of the application and that the Tenant does owe that money. As such, I find that the Tenant did not dispute the 10 Day Notice. Additionally, given Rule of Procedure 7.12, I decline to amend the application at the hearing, as I find that there is no evidence that it could be reasonably anticipated. Furthermore, I find that the Tenant only made a partial payment of $600.00 towards the unpaid rent and that payment was made after the required timeframe. Based on the above, I find the Tenant is conclusively presumed to have accepted the end of the tenancy under section 46(5).

Even if the Tenant did dispute the 10 Day Notice, based on the testimony of both parties, I find that the Tenant did not have a legal reason to withhold rent. The testimony

of both parties confirms that the 10 Day Notice was issued for the valid reason of unpaid January 2025 rent.

I also find that the 10 Day Notice meets all the form and content requirements under section 52 of the Act.

Therefore, I find that the Landlords are entitled to an Order of Possession based on the 10 Day Notice under sections 46 and 55 of the Act. Given the Tenant's current situation including financial and mental health, I grant an Order of Possession effective **1:00PM on February 15, 2025**.

Are the Landlords entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence before me, I find that the Landlord has established a claim for partial unpaid rent owing for January 2025. I find that the Tenant made a partial payment of $600.00 and currently owes $1,000.00 towards January 2025 rent.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlords are entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of $1,000.00.

Should the Landlords' One Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

Given that I have ended the tenancy based on the 10 Day Notice, I find that it is not necessary to consider any evidence or submissions relating to the One Month Notice.

Is the Tenant entitled to an order requiring the Landlords to comply with the Act, regulation or tenancy agreement?

This issue was severed at the beginning of the hearing; however, given that this tenancy has ended based on the 10 Day Notice, I dismiss this claim.

Are the Landlords entitled to recover the filing fee for this application from the Tenant?

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the $100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlords **effective February 15, 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.

I grant the Landlords a Monetary Order in the amount of **$1,100.00** under the following terms:

Monetary Issue	**Granted Amount**
a Monetary Order for unpaid rent and/or utilities under section 67 of the Act	$1,000.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	$100.00
Total Amount	**$1,100.00**

The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced in the Small Claims Court of British Columbia 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 entire application 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 28, 2025

Residential Tenancy Branch