



DECISION

Introduction

This hearing was convened as a result of the parties' Applications for Dispute Resolution under the *Residential Tenancy Act* (the "Act").

The Tenant applied to cancel a 10 day notice to end tenancy for unpaid rent or utilities dated December 27, 2024 (the "10 Day Notice") under section 46 of the Act.

The Landlord applied for:

- an order of possession of the rental unit based on the 10 Day Notice under section 55 of the Act;
- compensation of \$9,117.20 for unpaid rent and utilities under section 67 of the Act; and
- authorization to recover the Landlord's filing fee from the Tenant under section 72(1) of the Act.

The Tenant and the Landlord attended this hearing and gave affirmed testimony.

Service of Notice of Dispute Resolution Proceeding and Evidence

The parties acknowledged receipt of each other's applications and documents for dispute resolution.

Issues to be Decided

Should the 10 Day Notice be cancelled?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to compensation for unpaid rent and utilities?

Is the Landlord entitled to recover his filing fee?

Background and Evidence

This tenancy commenced on April 1, 2024. The rent is \$1,800.00 due on the first day of each month. The Tenant paid a security deposit of \$900.00.

On December 27, 2024, the Landlord issued the 10 Day Notice to the Tenant with an effective date of January 5, 2025. This notice states that the Tenant failed to pay rent of \$3,600.00 and utilities of \$260.00. According to the Landlord, he emailed a copy of the 10 Day Notice to the Tenant and attached a copy to the Tenant's door on December 27, 2024.

The Tenant testified that she was away and received the 10 Day Notice on her door and via email on Sunday, December 29, 2024, after returning home. The Tenant commenced her application on January 3, 2025 online. The Tenant explained that she did not have the means pay the filing fee online and had to wait for the office to be open on Monday, January 6, 2025 to pay the filing fee.

The Landlord's Position

The Tenant did not pay rent for August 2024, December 2024, and January 2025 (total \$5,400.00). The Tenant is not likely to be moved out by February 1, 2025.

The Tenant is responsible for the payment of all utilities in relation to the property. The Tenant did not pay for the \$259.80 water bill dated October 1, 2024. The Landlord requested the Tenant to pay the bill via text message on October 29, 2024 and on December 12, 2024. The Tenant replied that she will have the money for the water bill before the end of the month.

In addition, the Landlord seeks compensation for yard maintenance (\$260.00), a damaged garage door (\$3,097.40), and further damages to the house, cleaning, and bailiff costs which are undetermined at this time. The Landlord incurred the cost for yard maintenance following complaints from neighbours. The garage door was damaged by someone backing their vehicle into it, which the Landlord discovered just before the parties re-signed their lease for April 2024. The Tenant is also responsible for a septic cleanout cost estimated at \$414.75.

The Tenant's Position

The Tenant has resided at the rental unit since 2023. The first tenancy included the Tenant's ex. The Tenant's ex moved out and a new tenancy agreement was signed between the parties.

The Tenant acknowledges that the rent and water bill claimed by the Landlord have not been paid. The Tenant did say over text message that she would pay when she had the funds. The Tenant is a single parent. The Tenant is waiting on payments from work to come through. The Tenant currently does not have the funds. The Tenant tried to find another place.

The Tenant is not aware of what happened to the garage door as the Tenant had left the rental unit for a few months while her ex was still living there. The Tenant does not agree with the damages or lawn maintenance claimed by the Landlord.

Analysis

Should the 10 Day Notice be cancelled?

Section 26(1) of the Act states that a tenant must pay rent when it is due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

In this case, I have reviewed the 10 Day Notice and I find it to comply with section 52 of the Act in form and content.

I accept the Tenant's testimony that she received copies of the 10 Day Notice at her door and via email on Sunday, December 29, 2024. I find that under section 46(4) of the Act, the Tenant had 5 days, or until Friday, January 3, 2025, to pay the overdue amounts or dispute the 10 Day Notice by making an application for dispute resolution.

I find the Tenant did not make any payment to the Landlord within 5 days of receiving the 10 Day Notice.

I find the Tenant commenced her application on Friday, January 3, 2025, but did not pay the filing fee until Monday, January 6, 2025.

Under Rule 2.6 of the Rules of Procedure, an application for dispute resolution has been made when it has been submitted and either the fee has been paid or the fee waiver application has been submitted to the Residential Tenancy Branch or through a Service BC Office. The 3-day period for completing payment "is not an extension of any statutory timelines for making an application". Therefore, I find the Tenant did not make her application to cancel the 10 Day Notice on time.

The Tenant did not apply for more time to dispute the 10 Day Notice under section 66(1) of the Act. However, I do not find that it is necessary to resolve this issue, since I find it is undisputed that the Tenant owes the Landlord unpaid rent and utilities as stated in the 10 day Notice. I find that even if the Tenant had disputed the 10 Day Notice on time, the outcome would be the same in that the Tenant's application must be dismissed.

For these reasons, I am satisfied that the 10 Day Notice should be upheld. I dismiss the Tenant's application to cancel the 10 Day Notice without leave to re-apply.

Is the Landlord entitled to an order of possession?

Section 55(1) of the Act states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the

landlord an order of possession of the rental unit if:

- the landlord's notice to end tenancy complies with section 52 of the Act in form and content; and
- during the dispute resolution proceeding, the director dismisses the tenant's application or upholds the landlord's notice.

Having found the 10 Day Notice to comply with requirements of section 52 of the Act and having dismissed the Tenant's claim to cancel the 10 Day Notice, I find the Landlord is entitled to an order of possession under section 55(1) of the Act.

Pursuant to sections 46(1) and 53(2) of the Act, I find the effective date of the 10 Day Notice is automatically corrected to January 31, 2025. This corrected effective has already passed. Pursuant to section 68(2)(a) of the Act, I order that this tenancy is ended January 31, 2025, the date of this decision. I grant the Landlord an Order of Possession effective seven (7) days after service upon the Tenant.

Is the Landlord entitled to compensation for unpaid rent and utilities?

Section 67 of the Act states that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I accept that since the 10 Day Notice was issued, rent for January 2025 also became due and owing. Based on the evidence presented, I find the Landlord is entitled to compensation for unpaid rent of \$5,400.00, or \$1,800.00 × 3 months for August 2024, December 2024, and January 2025.

I find the Tenant does not dispute the charge for the water bill. I find that under section 22 of the tenancy agreement, the Tenant is responsible for all utilities for the rental unit. I find the Landlord is entitled to compensation of \$259.80 for the unpaid water bill dated October 1, 2024.

I note the Landlord raised the issue of rent for February 2025. As explained in Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent, unpaid rent is money that is due and owing during the tenancy. Should the Tenant continue to overhold in the rental unit beyond the tenancy end date, the Landlord is at liberty to make a separate application to seek compensation.

I find the Landlord's application raises issues that are not related to ending this tenancy due to unpaid rent and utilities (i.e. yard maintenance, garage door damage) and potential damages that are undetermined (i.e. other damages, cleaning, and bailiff costs). I find the Landlord's evidence raises a septic cleanout issue that is not claimed on the Landlord's application.

Additionally, the Landlord indicated that he has other relevant evidence not yet submitted for these issues.

Under Rule 2.2 of the Rules of Procedure, the claim is limited to what is stated in the application. Rule 2.3 further states that claims made in the application must be related to each other. Under Rule 6.2, the arbitrator may use their discretion to dismiss unrelated claims with or without leave to re-apply.

Considering the above, I exercise my discretion to sever and dismiss with leave to re-apply, the Landlord's claims regarding yard maintenance, garage door damage, and undetermined damages. The Landlord is at liberty to make a separate application to address these issues and the septic cleanout cost.

Is the Landlord entitled to recover his filing fee?

The Landlord has been generally successful in his application. I find the Landlord is entitled to recover his filing fee from the Tenant under section 72(1) of the Act.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **seven (7) days** after service upon the Tenant. 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 in the Supreme Court of British Columbia and enforced as an order of that Court.

The Landlord is entitled to compensation of \$5,759.80. Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to deduct the \$900.00 security deposit in partial satisfaction of this amount.

Pursuant to sections 67 and 72(1) of the Act, I grant the Landlord a Monetary Order of **\$4,859.80** for the balance, calculated as follows:

Item	Amount
Rent (August 2024, December 2024, January 2025)	\$5,400.00
Water Bill	\$259.80
Filing Fee	\$100.00
Subtotal	\$5,759.80
Less Security Deposit	- \$900.00
Total Monetary Order for Landlord	\$4,859.80

This Order may be served on the Tenant, filed in the Small Claims Division of the Provincial Court of British Columbia, and enforced as an order of that Court.

The Landlord's claims regarding yard maintenance, garage door damage, other damage, cleaning, and bailiff costs are severed and dismissed with leave to re-apply. The Landlord is at liberty to make a separate application regarding these issues and the septic cleanout issue not addressed in this decision.

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 31, 2025

Residential Tenancy Branch