

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Tenant and the Landlord under the *Residential Tenancy Act* (the Act). The Tenant's Application for Dispute Resolution, filed on December 28, 2024 (the Application), is for:

- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- Authorization to recover the filing fee for the Application from the Landlord under section 72 of the Act

The Landlord's Application for Dispute Resolution, filed on December 31, 2024 (the Cross Application), is for:

- An Order of Possession based on the One Month Notice under sections 47 and 55 of the Act
- Authorization to recover the filing fee for the Cross Application from the Tenant under section 72 of the Act

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

The Landlord acknowledged receiving the Proceeding Package, including copies of the Tenant's evidence, from the Tenant by email and raised no concerns regarding this service. The Landlord's email address is provided as an address for service. I therefore find the Proceeding Package for the Application was duly served to the Landlord in accordance with section 43(2) of the *Residential Tenancy Regulation* (the Regulation).

The Tenant acknowledged receiving the Proceeding Package and Landlord's evidence for the Cross Application by email and raised no concerns regarding this service. The Tenant's email address is provided as an address for service. I therefore find the Proceeding Package for the Cross Application was duly served to the Landlord in accordance with section 43(2) of the *Residential Tenancy Regulation* (the Regulation).

Issues to be Decided

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

Is either the Tenant or the Landlord entitled to recover the filing fee for the Application or the Cross Application from the other party?

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.

It is undisputed that the Landlord and the Tenant resided in the rental unit as roommates from May to June 2024. The Tenant paid a \$600.00 security deposit under the roommate agreement, which the Landlord returned to the Tenant on June 19.

In anticipation of the Landlord moving out of the rental unit, the parties signed a one-year fixed term tenancy agreement on June 13, 2024, that was to start on July 1 (the July 2024 tenancy). The monthly rent under this tenancy agreement was \$2,400.00, due on the first day of the month and a security deposit of \$1,200.00 was required by July 1.

It is undisputed that the One Month Notice was signed and dated by the Landlord on December 17, 2024, and that it was sent to the Tenant at her pre-agreed email address the following day. The Tenant acknowledges receiving the One Month Notice by email and the Landlord's evidence includes an email from the Tenant acknowledging receipt of the One Month Notice on December 19.

The One Month Notice states the tenancy is ending because the Tenant has not paid the security or pet damage deposit within 30 days as required by the tenancy agreement. The details section of the One Month Notice states:

The agreement was signed on the 13th of June 2024, and the tenancy officially started on 1st of July 2024. Attempts to Resolve: I have provided the tenant with five written requests to make the payment of the security deposit in 6 months. Despite these efforts, the tenant has not complied.

The Tenant signed the July 2024 tenancy agreement with a co-tenant, E.R., who never moved into the rental unit. The Tenant has lived in the rental unit since May 2024 and has paid monthly rent of \$1,200.00 since that time. The Tenant admits she has not paid a security deposit since her original deposit under the roommate agreement was returned to her on June 19.

Whether the July 2024 tenancy was frustrated was the subject of the prior Residential Tenancy Branch (RTB) disputes recorded on the cover page of this decision. The RTB decision dated December 10, 2024 determined:

After signing the tenancy agreement, I find that the subtenants were obligated and responsible to adhere to the terms of the tenancy agreement, even though subtenant E.R. did not occupy the rental unit, the subtenants are both responsible.

The Arbitrator who heard the prior disputes made no finding with regards to whether the Landlord was entitled to an order of possession for the non-payment of rent for July 2024, because the Landlord did not wish to end the tenancy at that time.

The Landlord testified that she sent text messages and emails to the Tenant requesting a security deposit of \$600.00 be paid on July 31, 2024, and then again on October 18, October 28 and November 2. Copies of the October 18 and 28 text messages were submitted into evidence by the Landlord and translated by the Landlord at the hearing.

The Landlord testified the October 18, 2024 text message asked the Tenant to send the deposit of \$600.00 by e-Transfer to her email address. She says the October 28 text message says it has been ten days since the last message with no reply or transfer into her account. This message adds that the Tenant was supposed to pay a deposit four months ago and that a deposit is required for all the contracts and that it must be paid.

The Tenant testified that she has responded to each of the Landlord's requests for payment of the security deposit. The Tenant says she is willing and able to pay a security deposit, and that she has communicated this to the Landlord. The Tenant states that she has not yet paid the deposit because the Landlord has failed to provide her with an updated tenancy agreement that properly reflects the new tenancy arrangement resulting from E.R. never moving into the rental unit.

The Tenant's evidence includes a draft tenancy agreement signed by the Landlord on July 18, 2024. This agreement, for a tenancy starting August 1, states monthly rent of \$1,200.00 is due on the first day of the month and requires a security deposit of \$600.00 be paid by August 1. The Tenant testified she did not sign this updated tenancy agreement because she did not agree with the additional terms the Landlord included in the addendum to the draft tenancy agreement.

The Tenant says she will not pay a security deposit until a new satisfactory tenancy agreement is signed. The Landlord wishes to end the tenancy based on the Tenant's failure to pay the security deposit as required under the July 2024 tenancy agreement.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

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

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47(4) of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the RTB. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

I find that the One Month Notice was served to the Tenant by pre-agreed email in accordance with section 43(2) of the Regulation on December 18, 2024, and that the Tenant received the One Month Notice on December 19. Therefore, the Tenant had until December 29 to dispute the notice.

As the Application was filed on December 28, 2024, the Tenant applied to dispute the One Month Notice within the required time frame. Therefore, no conclusive presumption applies under section 47(5) of the Act and the Landlord has the burden to prove that she has sufficient grounds to end the tenancy under section 47 of the Act by way of the One Month Notice.

It is undisputed that the Tenant has not paid a security deposit to the Landlord since signing the July 2024 tenancy agreement, which requires a security deposit of \$1,200.00 be paid by July 1. The Tenant's position is that the July 2024 tenancy agreement no longer applies to the tenancy and, therefore, that she is not required to pay a deposit until a new tenancy agreement is entered into.

Section 44 of the Act lists the events or occurrences which end a tenancy, which are:

- The tenant or landlord giving a valid notice to end the tenancy in accordance with one of sections 45 to 50 of the Act
- A fixed term tenancy that has reached the end of the term and requires the tenant to vacate the rental unit at the end of the term
- The landlord and tenant agree in writing to end the tenancy
- The tenant vacates or abandons the rental unit
- The tenancy agreement is frustrated
- The director orders that the tenancy is ended
- The tenancy agreement is a sublease agreement (and the main tenancy agreement has ended)

In the case before me, I find that the July 2024 tenancy has not ended under section 44 of the Act. While the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on November 11, 2024, the decision in the prior RTB disputes made no determination that this notice, in fact, ended the tenancy. Nor did the prior RTB decision end the tenancy on the basis the tenancy agreement was frustrated.

In the absence of either an order ending the tenancy, mutual agreement of the parties to end the tenancy, or a new tenancy agreement that replaces the July 2024 tenancy being signed, I find the parties continue to be governed by the July 2024 tenancy agreement they both signed on June 13, 2024.

Therefore, the Tenant was required to pay the \$1,200.00 security deposit required in the tenancy agreement by July 1, 2024. It is undisputed that the Tenant has failed to do so.

Based on the Landlord's testimony and evidence, I find that the Landlord waived their right to half of the original security deposit amount in recognition of the fact that the

Tenant was only responsible for half of the monthly rent and security deposit after E.R. did not move into the rental unit. However, I am satisfied that the Landlord has made repeated requests for payment of a \$600.00 security deposit and at no time waived her rights to enforce this requirement of the tenancy agreement.

For the above reasons, I am satisfied that the Landlord had sufficient grounds to issue the One Month Notice and the Landlord is entitled to end the tenancy, pursuant to section 47(1)(a) of the Act.

The Tenant's Application to cancel the One Month Notice under section 47 of the Act is dismissed, without leave to reapply.

Section 55(1) of the Act states that if a tenant's application to set aside a landlord's notice to end a tenancy is dismissed, the arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act.

I have reviewed the One Month Notice and find that it meets the form and content requirements set out in section 52 of the Act. Specifically, the One Month Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy and it is in the approved RTB form. Therefore, I find that the Landlord is entitled to an Order of Possession.

Is either the Tenant or the Landlord entitled to recover the filing fee for the Application or the Cross Application from the other party?

As the Tenant was not successful, their request to recover the \$100.00 filing fee paid for the Application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

As the Landlord was successful, I grant their request to recover the \$100.00 filing fee paid for the Cross Application from the Tenant under section 72 of the Act.

Conclusion

I grant an Order of Possession to the Landlord **effective by 1:00 PM on 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 Tenant's application for cancellation of the Landlords' One Month Notice to End Tenancy for Cause under section 47 of the Act is dismissed, without leave to reapply.

I grant the Landlord a Monetary Order in the amount of **\$100.00** under the following terms:

Monetary Issue	Granted Amount
Authorization to recover the filing fee for the Cross Application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$100.00

The Landlord is 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 Provincial Court of British Columbia (Small Claims Court).

The Tenant's application for authorization to recover the filing fee for the Application from the Landlords under section 72 of the Act 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: February 3, 2025

Residential Tenancy Branch