

## **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
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 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
- an order to end the tenancy based on a frustrated tenancy agreement under section 44 of the Act

This also hearing 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 recover the filing fee for this application from the Tenant under section 72 of the Act

A.W. and K.L. attended the hearing for the Landlord.

T.S. attended the hearing for the Tenant.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that Tenant was served with the Landlord's Proceeding Package in accordance with section 89(2) of the Act.

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## **Service of Evidence**

I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

No evidence was received by the Landlord from the Tenant. The Tenant confirmed that he did not serve any evidence to the Landlord for consideration. I noted that the only documents uploaded by the Tenant were the Notice he received and those pertaining to his application.

## **Preliminary Matters**

### *Increased Rent Claim*

At the outset of the hearing the Landlord sought to increase their monetary claim to reflect the Tenant's failure to pay rent for the month of March while waiting for this hearing.

*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 issue is one that the Tenant could have reasonably anticipated and resulted since the Landlord submitted their application.

### *Issues Severed*

Residential Tenancy Branch Rule of Procedure 6.2 provides that the arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply in accordance with Rule 2.3.

It further explains that if, for example, a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

I informed the parties at the outset that due to time constraints, I was only going to hear those aspects of the two applications relating to the continuation of the tenancy, as these were the most urgent. I further explained that I would be dismissing the Tenant's applications for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act;
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 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;
- an order to end the tenancy based on a frustrated tenancy agreement under section 44 of the Act.

I further informed the Tenant that these were being dismissed with leave to reapply in accordance with Rule 2.3.

### *Landlord Application Amendment*

During the hearing, the Landlord requested an order that the Tenant produce a copy of an inspection report document. The Tenant replied that he did not have such a document, as the Landlord had only provided him with a blank condition inspection form. He said that while the Landlord had asked him to complete this document and return it to him after he had finished some repairs to the rental unit, he did not do so.

The Landlord agreed that he had provided the Tenant with an incomplete document and had asked the Tenant to complete it and then return it to him.

Residential Tenancy Branch Rule of Procedure 7.12 states that an application can only be amended at a hearing in circumstances that can reasonably be anticipated, or where the other party consents to the amendment.

In this instance, I find that the Landlord's request is not one that could have been anticipated, and the Tenant, who insisted that such a document does not exist, did not consent.

In light of the foregoing, I have dismissed the Landlord's request that their application be amended to include a request for an order that the Tenant produce a copy of an inspection report.

### **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 an Order of Possession based on the 10 Day Notice?

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?

### **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 December 1, 2022, with a monthly rent of \$2,168.32. The Landlord held a security deposit in the amount of \$1,047.50, a pet damage deposit in the amount of \$1,047.50, and a deposit with respect to utilities in the amount of \$200.00.

On February 4, 2025, the Tenant applied for dispute resolution, seeking the orders outlined in the introduction of this Decision.

The Landlord served the Tenant with a 10 Day Notice for Unpaid Rent on February 6, 2025.

On February 10, 2025, the Tenant amended his application for dispute resolution, seeking cancellation of the 10 Day Notice for Unpaid Rent.

At the hearing the Tenant admitted that he did not pay his rent for February at any time. He added that he had vacated the rental unit on the evening of February 28, 2025, and that he notified the Landlord of this via e-mail.

The Tenant said that he had left one key for the rental unit on the table of the rental, and that he planned to send the other one to the Landlord in the mail. He explained that he had retained the second key because he needed it to lock the door.

At the hearing, the Landlord confirmed receipt of the e-mail but clarified that he was not aware of this until the Tenant raised it at the hearing. The Landlord added that he was unable to take possession of the property as he had given both keys he possessed to the Tenant, and did not have a key of his own to the rental unit.

At the hearing, the Tenant agreed that he would provide the Landlord with his remaining key to the unit by 1pm March 3, 2025, by placing it in the mailbox.

## **Analysis**

**Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession? If not, 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).

The Tenant admitted that he did not pay his rent for February at any time.

I find the Tenant failed to pay any rent within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the Act, due to the failure of the Tenant to pay his outstanding rent within five days, I find the Tenant is conclusively presumed to have accepted the end of this tenancy on February 16, 2024, the effective date on the 10 Day Notice. In this case, the Tenant and anyone on the premises were required to vacate the premises by February 16, 2024.

I find that the Landlord is entitled to 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.

At the hearing the Tenant said that he had vacated the rental unit on the evening of February 28, 2025, and that he notified the Landlord of this via e-mail.

The Tenant agreed that he would provide the Landlord with his remaining key to the unit by 1pm March 3, 2025.

### **Is the Landlord 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.

Section 44 of the Act provides a list of the circumstances in which a tenancy may end. This list includes a Landlord's notice for non-payment of rent, in accordance with section 46 of the Act.

Section 46 of the Act states that a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the Tenant receives the notice.

I have already found that this tenancy ended in accordance with the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent. The tenancy ended on February 16, 2025, the effective date on the 10 Day Notice.

I find that the Landlord has established a claim for unpaid rent in the amount of \$1,239.04 for the 16-day period spanning February 1 through 16, 2025, calculated as follows:

$$\$2,168.32 / 28 \text{ days} = \$77.44 \text{ per day} \times 16 \text{ days} = \$1,239.04$$

### ***Overholding***

Although the tenancy ended on February 16, 2025, further to the 10 Day Notice, I accept that the Tenant indicate that they did not vacate until February 28, 2025.

Section 57(3) states a Landlord may claim compensation from an overholding Tenant for any period that the overholding Tenant occupies the rental unit after the tenancy is ended.

Policy Guideline #3 states that Tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the Act, however if Tenants remain in possession of the premises (overholds), the Tenants will be liable to pay occupation rent on a per diem basis until the Landlords recovers possession of the premises.

I find, on a balance of probabilities, that the Tenant remained in the rental unit January 15, 2025, the day of the hearing. In reaching this conclusion, I found the Tenant's testimony compelling and note that the Landlord confirmed receipt of an email from the Tenant indicating this. I also considered the fact that the Landlord provided their e-mail address as an address for service in the tenancy agreement.

I find that the Landlord is entitled to compensation in the amount of \$929.28 as a result of the Tenant's decision to remain in the rental unit (overholding) for the period spanning February 17 through 28, 2025, calculated as follows:

$$\$2,168.32 / 28 \text{ days} = \$77.44 \text{ per day} \times 12 \text{ days} = \$929.28$$

### *March Rent*

While the Landlord claimed compensation in relation March rent, I have already found that the tenancy ended on February 16, 2025, further to the 10 Day Notice. Further to Policy Guideline #3 which states that Tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the Act, I find that the Landlord has not established entitlement to rent for March 2025.

### *March Overholding*

Tenants who remain in possession of the premises (overholds) will be liable to pay occupation rent on a per diem basis until the Landlords recovers possession of the premises.

I find that the Tenant ceased occupying the rental unit on February 28, 2025. I again note that the Tenant informed the Landlord in writing that same day that he was vacating the property. I also note that he was authorized to serve the Landlord with documents via email.

However, the Landlord the said that he could not have taken possession of the property as he had given the only two keys to the Tenant.

As a result, I find that the Landlord is entitled to compensation in the amount of \$232.3 as a result of the Tenant's failure to return all keys, which prevented the Landlord from taking possession of the rental unit for the period spanning March 1 through 3, 2025, calculated as follows:

$$\$2,168.32 / 28 \text{ days} = \$77.44 \text{ per day} \times 12 \text{ days} = \$232.32$$

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 Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$2,400.64 (\$1,239.04 + \$929.28 + \$232.32)

The Landlord continues to hold the Tenant's \$1,047.50 security deposit, \$1,047.50 pet damage deposit, \$200.00 utility deposit, and interest in the amount of \$111.90 in trust.

In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain \$2,400.64 from the Tenant's deposits plus interest in satisfaction of the monetary order.

### **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.

In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain the \$6.26 from the Tenant's deposits plus interest in partial satisfaction of their request for the return of their filing fee.

### **Conclusion**

I grant the Landlord a Monetary Order in the amount of **\$93.74** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent and overholding under section 67 of the Act	\$2,400.64
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Security Deposit plus interest	-\$2,406.90

<b>Total Amount</b>	<b>\$93.74</b>
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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: March 3, 2025

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Residential Tenancy Branch