

## **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

The 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

Landlord C.P. attended the hearing. No one attended the hearing for the Tenant.

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

I find that Tenant K.E.M.C. was served on February 19, 2025, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

I find that Tenant B.J.P. was served on February 19, 2025, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

### **Preliminary Matters**

Rule 4 of the *Rules of Procedure* allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served. Section 64(3) allows the director to amend an application or permit an application to be amended.

In consideration of the evidence filed and the testimony of the landlord, further to Rule 4, I find the tenant could reasonably have anticipated that the landlord would claim a monetary order for outstanding rent and utilities which accrued following the service of the Ten-Day Notice.

### **Issues to be Decided**

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**

Evidence shows that the tenancy started on October 15, 2024, and was for a fixed term of 13 months, ending on November 30, 2025.

A copy of the Tenancy Agreement shows that the monthly rent is \$2100.00 per month, due on the first day of each month. At the onset of the tenancy a security deposit in the amount of \$1050.00 was paid, which the Landlord still holds at the time of the hearing. The Tenancy Agreement shows that heat and hydro are the responsibility of the Tenant.

The Landlord submitted a copy of two #RTB-51, Address for Service forms, in which the Tenant's provided their email for service. The Tenants signed the forms on October 11, 2024.

On February 10, 2025, the Landlord served the Tenant, via email, a 10 Day Notice to End Tenancy (the "Notice"). The Notice indicated that \$1600.00 was outstanding for February 2025's rent. Within their application to dispute the Notice, the Tenants stated that they received the Notice on February 10, 2025.

The Tenant filed to dispute the Notice on February 13, 2025.

The Landlord sent an email to the Tenants on February 10, 2025, which indicated that in addition to outstanding rent, the Tenants owed for hydro costs from October 2024 to January 17, 2025, as well as parking fees, and returned check charges.

On February 19, 2025, the Landlord applied for dispute resolution, requesting an order of possession and monetary order related to the unpaid rent and utilities.

The Tenant did not attend the scheduled hearing.

During the hearing the Landlord submitted a ledger showing that the Tenant owed \$4631.00 related to the following charges:

- accumulated outstanding rent in the amount of \$3700.00

- outstanding hydro charges in the amount of \$641.06
- NSF charges
- Parking charges

## **Analysis**

### **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(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).

I find that the 10 Day Notice was served to the tenant on February 10, 2025, and that the tenant had until February 15, 2025, to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenant made their application within the allowed timeframe.

Section 46 of the Act states that

- (1)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.
- (2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

Based on the evidence before me, I find the Tenant failed to pay rent within five days of receiving the 10 Day Notice.

I find no reason to find that the unpaid amount is an amount the Tenant was permitted under this Act to deduct from rent.

Therefore, the Notice of February 10, 2025, is upheld and I find that the Landlord is entitled to an Order of Possession under sections 46 and 55 of the Act.

### **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 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.

Under section 55 of the Act, the Landlord is to be granted a Monetary Order for unpaid rent if the Notice is upheld.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$3700.00.

### *Hydro*

The Landlord is claiming \$641.06, in relation to unpaid Hydro charges.

Section 46 of the Act provides that a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The Landlord provided written demand for payment of \$257.06 on February 10, 2025. Since that date further charges have accrued as indicated within the Preliminary Matters of this decision, totaling \$641.06 at the time of the hearing.

In consideration of the Tenancy Agreement, written request for payment, ledger, and section 46 of the Act, I find that the Landlord is entitled to a Monetary Order for hydro under section 67 and 55 of the Act, in the amount of \$641.06.

### *Parking and Late Payment Fees*

The Landlord is requesting that late payment fees and parking fees be included in the monetary order in relation to unpaid rent. These fees are not rent and as such cannot be included in granting compensation under section 55 of the Act. Therefore, the Landlord's request for a monetary order in relation to the late payment fees and parking is dismissed, with leave to reapply.

### **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.

### **Conclusion**

I grant an Order of Possession to the Landlord **effective seven (7) days 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 **\$3382.83** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent and utilities under section 67 of the Act	\$4341.06
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	-\$ <b>\$1058.23</b>
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$ 3,382.83</b>

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.

Dated: March 19, 2025

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Residential Tenancy Branch