



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
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 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 to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing also dealt with the Landlord's application for an order of possession based upon the 10 Day Notice to End Tenancy, a monetary order for unpaid rent, as well as authorization to recover the filing fee for the application from the Tenant.

Preliminary Matters

During the hearing the Landlord sought to increase its monetary claim from \$3,589.38 to \$7,178.76 to reflect the Tenant's failure to pay monthly rent for March, 2025, the additional month of unpaid rent 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 was clearly rent that the Tenant would have known about and resulted since the Landlord submitted the application.

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

The Tenant served the dispute resolution proceeding package to the Landlord's agent by Canada Post registered mail, received by the agent on February 19, 2025.

The parties acknowledged service of their evidence to the other party, each party confirming receipt and an opportunity to review prior to the hearing.

Issues for Decision

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 a monetary order for unpaid rent?

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

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

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

Is the Tenant or the Landlord entitled to recover the filing fee for this application from the Other Party?

Background and Evidence

I have reviewed the evidence, and I have considered the testimony of the parties, but I will refer only to what I find relevant to my decision.

Evidence establishes this tenancy began on June 1, 2022, for a fixed term to May 31, 2023, and thereafter has continued on a month-to-month basis. The Tenant's current monthly rent is \$3,589.38 due on the first day of the month. The Tenant's co-tenant vacated the premises approximately late April 2024 and the Landlord's agent confirmed the co-tenant was removed from the tenancy agreement on April 30, 2024. The Tenant provided a security deposit in the amount of \$1,700.00 at the start of the tenancy, which the Landlord continues to hold in trust. The Tenant explained he had also provided a \$1,700.00 pet damage deposit at the start of the tenancy, but this sum was returned shortly after the start of the tenancy as their pet dog stayed for a short period of time. The Tenant stated that in 2023, he and his co-tenant obtained another pet and at that time provided the Landlord with a pet damage deposit in the amount of \$1,734.00. The Landlord's agent confirmed this second pet damage deposit is held in trust. The Landlord's agent stated total deposit funds in the amount of \$3,434.00 are held in trust for the Tenant. A copy of the tenancy agreement was provided in evidence.

On February 6, 2025, the Landlord issued a 10 Day Notice to End Tenancy for unpaid rent in the amount of \$3,589.38. The effective date of the Notice was February 19, 2025. The Notice stated rent was unpaid as of January 2, 2025. A copy of the Notice was provided in evidence.

The Tenant stated he contacted the Landlord and advised the Notice was in error because rent had been paid for January 2025. The Landlord thereafter re-issued a 10 Day Notice on February 20, 2025, to provide for unpaid rent in the amount of \$3,589.38 due as of February 1, 2025. The effective date of the Notice was March 5, 2025. The Tenant amended his application to cancel this 10 Day Notice. A copy of the Notice was provided by the Landlord in its evidence. The parties agreed this 10 Day Notice was the Notice which the Tenant sought to cancel. The Landlord's agent confirmed the amount of unpaid rent did not include any NSF or other administrative fees.

The Landlord also issued a One Month Notice to End Tenancy for Cause on January 20, 2025. The grounds for the Notice were the Tenant's repeated late rent payments, citing late rent paid by the Tenant for November and December 2024, as well as January 2025. The effective date of the One Month Notice was February 28, 2025. The Tenant testified he received the Notice on February 9, 2025. A copy of the Notice was submitted in evidence. The Landlord provided a copy of the Tenant's ledger confirming the late rent payments.

The Tenant testified he had not paid rent for February and March, 2025, and did not contest the late rent payments set forth in the One Month Notice. The Tenant stated that when his co-tenant moved out with their pet in mid-May 2024 (after staying as a guest for 2 weeks), the Landlord had agreed to return the pet damage deposit upon inspection of the premises. A written exchange between the parties regarding this arrangement at the time was provided in evidence. However, at the time for inspection, the Landlord refused to return the pet damage deposit. The Landlord's agent stated the condition of the home with packing boxes was such that a condition inspection could not be conducted. The Tenant stated that because the Landlord would not return the pet damage deposit at that time, he then paid his co-tenant. This, in turn, led to a ripple effect with his finances and he was unable to pay rent on a timely basis, which continued for several months.

The Tenant's monetary claim was for reimbursement of the pet damage deposit in the amount of \$1,700.00; \$300.00 for utility bills after his co-tenant moved out; and \$1,000.00 for loss of quiet enjoyment. The Tenant also requested the Landlord's right of entry be restricted. He stated the Landlord had issued multiple notices to enter the property which he considered a tactic to make the Tenant move out and which were the basis for his loss of quiet enjoyment.

The Landlord's agent stated that when the pet damage inspection could not be conducted after the co-tenant moved out, the Landlord would not return the pet damage deposit and informed the Tenant that the issue of pet damage would be resolved at the end of the tenancy.

The agent further stated that having served the One Month Notice to the Tenant on January 20, 2025, by Canada Post registered mail, it was deemed received by the Tenant five days later, rather than when the Tenant went to the post office on the last day available to pick-up the Notice on February 9, 2025. Thus, the Landlord's position was the Tenant was not timely in filing his application on February 13, 2025, to cancel the One Month Notice.

The Landlord's agent confirmed the outstanding rent due for February and March 2025 was \$7,178.76, and this amount does not include utilities, administrative late fees or service charges.

Analysis

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession based on the 10 Day Notice? 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 amend the Tenant's application to provide for a claim by the Tenant to cancel the 10 Day Notice issued by the Landlord on February 20, 2025, and thus the Tenant timely applied to cancel the Notice. I further find the 10 Day Notice issued February 20, 2025, complies with section 52 of the Act.

In this case, the Tenant admitted he had not paid rent for February and March 2025. Section 26 of the Act requires a tenant to pay rent when it is due. The Tenant stated the late rent was a result of the Landlord failing to return the pet damage deposit in May 2024. However, a review of the Tenant's ledger indicates that his rent was timely made for the period May 2024 to November 1, 2024, when the Tenant began to make late rent payments. Moreover, pursuant to section 26 of the Act, absent an order or a right under the Act, a Tenant must pay rent when it is due. The Landlord's alleged failure to return a pet damage deposit after inspection of a unit does not afford a Tenant a right to withhold rent or justify the failure to pay rent.

For the above reasons, the Tenant's application to cancel the 10 Day Notice to End Tenancy for unpaid rent under sections 46 and 55 of the Act is dismissed without leave to reapply.

The Landlord's application for an Order of Possession based on the 10 Day Notice issued February 20, 2025, under sections 46 and 55 of the Act is granted.

Section 55(1.1) of the Act provides that if a tenant makes an application for dispute resolution of a notice to end tenancy for unpaid rent under section 46, and the landlord's

notice complies with section 52 of the Act, and the tenant's application is dismissed or the landlord's notice is upheld, then the director must grant an order for unpaid rent.

I find the Tenant has unpaid rent owing for February and March 2025 in the amount of \$7,178.76. I grant a monetary order in accordance with section 55(1.1) to the Landlord for unpaid rent in this amount.

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

The Tenant's application requested \$300.00 for an alleged excessive utilities charge; \$1,700.00 for reimbursement of the pet damage deposit he states the Landlord promised to return in May, 2024; and, \$1,000.00 for loss of quiet enjoyment based upon the Landlord allegedly serving several notices to inspect the property. I find the Tenant has failed to provide evidence to support the utility charge in the amount of \$300.00 and the loss of quiet enjoyment in the amount of \$1,000.00. The Tenant did not provide evidence of the utility billing statement and an explanation as to how it was excessive. Furthermore, the Tenant did not provide any corroboration to support his claim for loss of enjoyment.

With respect to the Landlord's refusal to return the pet damage deposit when the co-tenant moved out in May 2025, Policy Guideline 31 addresses the return of a pet damage deposit:

As with security deposits, a landlord must return any remaining pet damage deposit and any statutory interest within 15 days after the tenancy ends or the landlord receives the tenant's forwarding address in writing, whichever is later. (citing to section 38(1) of the Act).

In this case, the Landlord's agent stated a condition inspection for pet damage was scheduled but could not be completed in May 2024, when the pet left the unit, due to the moving boxes and condition of the unit. The Landlord can retain the pet damage deposit to the end of the tenancy under section 38 of the Act.

For these reasons, the Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

The Tenant's Remaining Claims

As I have found the tenancy has ended pursuant to section 46 of the Act, the Tenant's remaining claims to cancel the One Month Notice issued January 20, 2025; to restrict the Landlord's entry to the rental unit; and, for the Landlord to comply with the Act, regulations, or tenancy agreement, are moot. I make no findings on these issues.

Authorization for Reimbursement of the Filing Fee

As the Landlord was the successful party in its application, under section 72 of the Act, I authorize the Landlord to receive reimbursement from the Tenant for the filing fee in the amount of \$100.00. As the Tenant was not successful in his application, I decline to authorize reimbursement to the Tenant of the filing fee for his application.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$7,278.76** for unpaid rent for February and March, 2025 under section 55 of the Act, and reimbursement of the filing fee under section 72 of the Act.

The Landlord is provided with this Order on 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 in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I grant an Order of Possession to the Landlord effective **ten (10) days after service of this Order** on the Tenant. Should the Tenant or any occupant 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.

This decision is issued on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 19, 2025

Residential Tenancy Branch