

## **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
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 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

This hearing also dealt with the Landlord's cross 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 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
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenant's Sister and Advocate C.W. attended the hearing for the Tenant.

The Landlord B.R., the Landlord's Spouse A.M. attended the hearing for the Landlord.

### **Preliminary Matters**

At the beginning of the hearing, the Tenant's Sister and Advocate C.W. testified that the Tenant departed on March 12, 2025. C.W. stated that the Tenant did not have a will, and that there is no representative for the Tenant's estate.

Based on the above, the filing date of the Tenant's application - February 18, 2025, I find that there is no person with the authority to represent the Tenant present for the hearing. While I acknowledge the presence of the Tenant's Sister and Advocate C.W., I

find that C.W.'s authority and the designation of a representative of the Tenant's estate is unclear at the time of this hearing. Consequently, I do not assign weight to C.W.'s testimony given the level of their authority and I dismiss the Tenant's application with leave to reapply.

The following issues from the Tenant's application are dismissed, with leave to reapply:

- 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
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 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

In addition, under the guidance of Residential Tenancy Branch Policy Guideline #43, regarding the passing of the Tenant, I find that it is reasonable in these circumstances to amend the style of proceeding and both applications before me, to correctly reflect the Tenant's passing. I amend the style of proceeding on both applications under section 64 of the Act and Rule 7.12.

## **Service of the Landlord's Notice of Dispute Resolution Proceeding and Evidence**

The Landlord B.R. testified that they sent the Notice of Dispute Resolution to the rental unit by registered mail on March 10, 2025. B.R. provided the tracking number at the hearing. B.R. also provided the contents of the package sent on March 12, 2025.

I find that the Landlord served the Notice of Dispute Resolution Proceeding and their evidence on March 10, 2025, in compliance with section 89 and section 88 of the Act. Under section 90 of the Act, I find that the Tenant is deemed to have received the on March 15, 2025, on the fifth day after the registered mail was sent.

## **Issues to be Decided**

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to retain all or a portion of the security deposit?

Is the Landlord entitled to recover the filing fee?

## **Background and Evidence**

I have reviewed all evidence, including the testimony of the, but will refer only to what I find relevant for my decision.

The written tenancy agreement was provided by the Landlord showing that this tenancy began on April 30, 2024, with monthly rent in the amount of \$1,650.00, due on the first day of the month. The Landlord collected and continues to hold the Tenant's \$825.00 security deposit in trust. The rental unit is an apartment suite and the Tenant rents the entire suite under the agreement.

The Landlord testified that they served the Tenant with the 10 Day Notice for unpaid rent by registered mail on February 10, 2025. The Landlord submitted a copy of the 10 Day Notice, a copy of a completed proof of service form, and the Landlord provided the tracking number. The Landlord stated that at the time of this hearing, the Tenant has accumulated unpaid rent in the amount of \$4,950.00. The Landlord elaborated that the Tenant failed to pay rent for January, February and March of 2025. The Landlord affirmed that the Tenant paid December 2024 rent.

The Landlord submitted a screenshot of their online banking profile into the evidence to show the transfers for rent that the Tenant has provided between April 2024 to January 2025.

On examination of the 10 Day Notice, it contains the full name of the Tenant, the address of the rental unit, the name of the Landlord, the address of the Landlord, the effective date of when the Tenant must move out by – February 28, 2025, it is signed by the Landlord on February 10, 2025, and it lists the sum of \$3,300.00 as the amount of unpaid rent due on February 1, 2024.

## **Analysis**

### **Is the Landlord entitled to an Order of Possession?**

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).

Based on the undisputed testimony of the Landlord, the evidence provided, I find that the 10 Day Notice was duly served to the Tenant by registered mail on February 10, 2025. Although the Tenant's application was dismissed, I find that it is clear the Tenant received the 10 Day Notice and filed an application to dispute the 10 Day Notice. Consequently, I find that conclusive presumption is not applicable here.

Based on the undisputed testimony of the Landlord, the evidence provided, specifically the online banking screenshot showing the transfers received by the Landlord for rent, I

find that the Landlord has demonstrated on a balance of probabilities that the Tenant failed to pay rent for January, February and March of 2025. This supports that the Landlord had grounds to issue the 10 Day Notice for unpaid rent.

I have examined the 10 Day Notice, and I find that it complies with section 52 of the Act, given that it is signed and dated by the Landlord, it provides the address of the rental unit, it states the effective date of the Notice, it states the grounds for ending the tenancy, and it is in the approved form. Although I will note here that the due date of the rent contains a typographical error, specifically that it provides February 1, 2024, as the due date for rent. I find it more likely than not that this is typographical error and that it is clear the Landlord's submissions was referring to payments of rent for 2025 and not 2024. In these circumstances, I find it is reasonable to amend the 10 Day Notice under section 68 of the Act, specifically the year of the due date of the rent on the second page of the Notice to February 1, 2025.

I uphold the Landlord's 10 Day Notice.

Therefore, 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.

### **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.

In this case, I find that the Landlord has established their claim that the Tenant was responsible for paying rent under the tenancy agreement, the value of the monthly rent, and the fact that the Tenant failed to perform their obligation to pay the rent, thereby breaching section 26 of the Act and the tenancy agreement, for January, February and March of 2025.

I accept the Landlord's calculation for the unpaid rent, specifically the sum of \$4,950.00.

I assign significant weight to the Landlord's screenshot of their online banking account.

Under section 67 of the Act, I find that the Landlord is entitled to a Monetary Order for unpaid rent, in the amount of \$4,950.00.

### **Is the Landlord entitled to retain all or a portion of the security deposit?**

Section 72 of the Act allows the director to deduct any amount that a tenant must pay to a landlord, from any security deposit or pet damage deposit.

As the Landlord was found to be entitled to a Monetary Order for unpaid rent above, I find that the Landlord is entitled to retain all of the Tenant's security deposit, in the sum of \$825.00, plus interest in the amount of \$16.84, in partial satisfaction of the Monetary Order.

The interest was calculated in accordance with the Residential Tenancy Regulation, based on the date of this Decision, and with the assistance of the publicly available Residential Tenancy Branch deposit interest calculator

### **Is the Landlord entitled to recover the filing fee?**

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the filing fee under section 72 of the Act, I grant the Landlord a Monetary Order in the amount of \$100.00.

### **Conclusion**

I grant an Order of Possession to the Landlord **effective two (2) 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 **\$ 4,208.16** 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	\$4,950.00
authorization to retain all of the tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 and 72 of the Act	-\$841.84
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>\$4,208.16</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.

The Tenant's application is dismissed in its entirety, with 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: March 28, 2025

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Residential Tenancy Branch