

## **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 End of Employment (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 48 and 66 of the Act

and the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- an Order of Possession based on a One Month Notice to End Tenancy for End of Employment (One Month Notice) under sections 48 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

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

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenant(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

### **Service of Evidence**

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

## **Issues to be Decided**

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

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

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

## **Facts and Analysis**

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

The Landlord provided a copy of the 10 Day Notice. It is signed February 19, 2025, with a move out date of March 7, 2025. It requests \$1300.00 of unpaid rent that was due February 1, 2025. The Landlord affirms the requested amount is for February 2025 rent.

The Tenant affirms getting the 10 Day Notice on January 30, 2025, but the Landlord provided affirms serving it by registered mail on February 19, 2025, and provided a tracking number indicating it was delivered on February 20, 2025. Additionally, the Tenant filed for dispute resolution regarding the 10 Day Notice on February 20, 2025. I find the Tenant was served with the 10 Day Notice on February 20, 2025.

The Landlord provided a copy of the tenancy agreement stating that monthly rent is \$1300.00 per month and is due on the first day of each month. The tenancy started on January 12, 2018.

### **Should the Landlord's 10 Day Notice be cancelled?**

Both parties agree that the rental unit is provided to them by the Landlord as the Tenant were also employed as building managers. A copy of the employment contract was provided stating, "the employer will provide a rental apartment to the employee for business purposes at the rate of the \$1300.00 per month." The employment contract also states that, "the terms of this Agreement will commence on or about January 17, 2018."

Both parties also agree that the Tenant is currently on unpaid medical leave, and the Landlord provided copies of letters to the Tenant indicating they were placed on unpaid medical leave effective January 30, 2025.

Both parties agree that the Tenant's rent was regularly deducted from their pay cheque. The Tenant provided a copy of their pay stubs for the pay period ending January 31, 2025, showing that \$1300.00 was deducted in two parts from their pay cheques. Both

parties agree that this was standard practice and that a portion of each pay cheque was deducted for rent rather than all the rent coming from one pay cheque.

The Tenant confirmed, multiple times, that rent was deducted from their pay cheques for every single month from the start of their tenancy until the pay period ending January 31, 2025. The Tenant affirms the January 2025 deductions were for February 2025 rent while the Landlord affirms they were for January 2025 rent and February 2025 rent remains unpaid.

Because the employment contract and the tenancy agreement started at effectively the same date, and the Tenant affirms they only paid rent by pay cheque deduction and no other manner, and they do not claim to have had pay cheque deductions larger, or more frequent, than those in the pay period ending January 31, 2025, I find that, by necessity, the Landlord would always be playing catch up, deducting monthly rent in the month it was due, but after the day it was due. Flowing from this is my finding that the rent deductions in the pay period ending January 31, 2025, were, in fact, for January 2025 rent and not February 2025 rent which remains unpaid.

For the above reasons, the tenant's application for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act is dismissed, without leave to reapply.

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

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

Therefore, I find that the landlord is entitled to an Order of Possession.

### **Is the landlord entitled to a Monetary Order for unpaid rent?**

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent in the amount of \$1300.00.

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

As the 10 Day Notice was not cancelled and the landlord is being given an Order of Possession, this issue was not adjudicated and is dismissed, without leave to reapply.

**Is the Landlord entitled to recover the filing fee for this application from the Tennant?**

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 the Landlord a Monetary Order in the amount of **\$1400.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under sections 55 and 72 of the Act	\$1300.00
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>\$1400.00</b>

I grant an Order of Possession to the Landlord **effective at 1:00 p.m. 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.

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 25, 2025

---

Residential Tenancy Branch