

DECISION

Introduction

This hearing dealt with cross applications.

The Tenant applied 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 Landlord applied for:

- an Order of Possession for unpaid rent based on the Landlord's 10 Day Notice to End Tenancy for Unpaid rent under section 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- recovery of the filing fee paid for this application from the Tenant under section 72 of the Act

The Tenant did not appear at the hearing despite leaving the teleconference call open until 9:48 a.m. to give her the opportunity to appear.

Landlord T.L. appeared at the hearing for the Landlord.

Preliminary and Procedural Matters

1. Tenant's application

The Landlord stated the Tenant did not serve her Application for Dispute Resolution to the Landlord. The Tenant did not present any documentary evidence to demonstrate the Tenant's Application for Dispute Resolution was served to the Landlord. The Tenant did not appear at the hearing to provide proof of service.

The Rules of Procedure state:

Rule 7.1 Commencement of the hearing

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Considering the Tenant did not appear at the hearing, and I was not satisfied the Tenant served the Landlord with the Tenant's proceeding package, I dismiss the Tenant's application without leave to reapply.

2. Landlord's application

The Landlord submitted a signed Proof of Service to prove the Landlord's proceeding package was served to the Tenant by attaching the documents to the rental unit door on March 25, 2025. I am satisfied the Landlord duly served the Tenant with the application for an Order of Possession, in accordance with section 89(2) of the Act. Therefore, I proceeded to hear from the Landlord without the Tenant present.

3. Naming of parties

I noted that the spelling of the Tenant's last name was different on the two applications before me. The Tenant's application reflects the spelling that appears on the 10 Day Notice. The Landlord's application reflects the spelling of the Tenant's last name that appears on the tenancy agreement. I note that in signing the tenancy agreement, the Tenant's signature appears consistent with the spelling of her last name that appears on the tenancy agreement; however, the Tenant's signature on the Tenant's Application for Dispute Resolution is consistent with the spelling of her last name on the 10 Day Notice. Therefore, I find it is reasonably likely the Tenant uses both spellings of her last name, and the style of cause reflects both spellings.

In filing the Tenant's application, the Tenant identified the Landlord as the individual named as the Landlord on the the 10 Day Notice. In filing the Landlord's application, the Landlord was named as the Landlord who signed the 10 Day Notice and was named as the Landlord in the tenancy agreement. During the hearing, Landlord T.L. indicated she is not the owner of the property and that she manages this rental property for the owner. Since an owner and an owner's agent both meet the definition of Landlord under section 1 of the Act, the style of cause reflects both the owner and owner's agent.

4. Withdrawal of remedies

The Landlord stated the Tenant has since paid all outstanding rent and the Landlord's request for a Monetary Order is withdrawn.

The Landlord also withdrew the request for recovery of the filing fee from the Tenant.

The withdrawals are beneficial for the Tenant and the Landlord's application was amended accordingly. The only matter for me to determine is whether the Landlord is entitled to an Order of Possession.

Issue(s) to determine

Is the Landlord entitled to an Order of Possession for unpaid rent based on the 10 Day Notice dated March 4, 2025?

Evidence and Analysis

The tenancy started on March 1, 2023. The monthly rent is \$1,900.00 due on the first day of every month. The Tenant paid a security deposit of \$950.00.

In February 2025 the Tenant made a partial payment toward rent owed for March 2025, in the amount of \$633.33. The Landlord served the Tenant with the 10 Day Notice, in person, on March 4, 2025. The 10 Day Notice indicates rent of \$1,266.67 was outstanding as of March 1, 2025.

On March 17, 2025 the Landlord filed their Application for Dispute Resolution.

On March 20, 2025 the Tenant paid \$2,000.00 to the Landlord by e-transfer. The Landlord applied the payment to the outstanding rent for March 2025 and the remainder as a payment toward rent for April 2025.

During an inspection a couple of weeks ago, the Landlord stated to the Tenant that they would still be attending this hearing.

On April 9, 2025 the Tenant paid the remaining balance for April 2025 rent.

The Tenant continues to occupy the rental unit.

The Landlord requested an Order of Possession with an effective date of April 30, 2025 to reflect the Tenant has paid rent for the month.

Under section 26 of the Act, a Tenant is required to pay rent when due in accordance with their tenancy agreement, even if the Landlord has violated the Act, regulations or tenancy agreement, unless the Tenant has a legal right to withhold rent. I was not presented any evidence to suggest the Tenant had a legal right to withhold rent from the Landlord.

Where a Tenant does not pay rent, the Landlord is at liberty to serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a Tenant receives a 10 Day Notice the Tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the Tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution.

In this case, the Tenant paid the outstanding rent on March 20, 2025 which is 16 days after receiving the 10 Day Notice. Therefore, I find the 10 Day Notice is not nullified by the payment.

The Tenant did file to dispute the 10 Day Notice, however her application was dismissed because it was not served upon the Landlord. Even if the Tenant's application had not been dismissed, the reason provided for disputing the notice, being financial hardship due to illness, is not a legal basis to cancel a 10 Day Notice under the Act. The Act provides very limited and specific circumstances when a Tenant may legally withhold rent that is otherwise due to the Landlord and a Tenant's financial hardship or illness, or both, is not one of them.

Considering the above, I uphold the 10 Day Notice, and I find the Landlord is entitled to an Order of Possession under section 55(2) of the Act.

I grant the Landlord an Order of Possession with an effective date of April 30, 2025, as requested by the Landlord.

Conclusion

The Tenant's application for cancellation of the 10 Day Notice is dismissed.

The Landlord's application for an Order of Possession is granted. I provide the Landlord an Order of Possession effective at **1:00 p.m. on April 30, 2025, after service upon the Tenant.** If the Tenant or any other occupant of the rental unit does not comply with the order, the order may be 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: April 11, 2025

Residential Tenancy Branch