

DECISION

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution (Application) 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);
- recovery of unpaid rent and utilities;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the amounts owed; and
- authorization to recover the filing fee for this Application from the tenant.

This hearing also dealt with the tenant's Application under the Act for:

- cancellation of the 10 Day Notice
- an extension under section 66 of the Act to the time limit for disputing the 10 Day Notice set out in section 46(4) of the Act;
- reimbursement for the cost of emergency repairs completed by the tenant in accordance with section 33 of the Act;
- compensation for monetary loss or other money owed;
- a rent reduction for repairs, services, or facilities agreed upon but not provided;
- an order suspending or setting conditions on the landlord's right to enter the rental unit; and
- an order that the landlord comply with the Act, regulations, or tenancy agreement.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The landlord and their advocate stated that each of the tenants were sent a copy of the Proceeding Package by registered mail on March 26, 2025. This was provided to the landlord by the Branch on March 24, 2025. The tenant A.D.G. acknowledged receipt by themselves and the co-tenant E.A.M.H. I therefore found the tenants sufficiently served with the landlord's Proceeding Package for the purposes of the Act and Residential Tenancy Branch Rules of Procedure (Rules). I therefore accepted their Application for consideration.

However, the tenant acknowledged that their Proceeding Package was not served on the landlord. They stated that this was because they did not know where to serve it. The

landlord's advocate stated that the tenancy agreement, the 10 Day Notice, and the Proceeding Package all contain addresses for service for the landlord, so the tenant had service information for the landlord available to them. I verified that the addresses were different in each of the above noted documents, and asked the tenant why they had not served, or attempted to serve, the Proceeding Package at any of these three addresses. They stated that as the landlord's address in the tenancy agreement is the rental unit address, they did not send it there, and were hoping to serve the landlord when they came to the rental unit like they usually do to pick up their mail. They stated that they did not serve them at the address in the 10 Day Notice as they knocked on that door and there was no answer or "signs of life" so they deemed the property to be abandoned, although they acknowledged that they could not see inside. Finally, they stated that they did not serve the landlord at the address in the landlord's Proceeding Package because they did not know it contained an address for service for the landlord and they did not receive it until later.

While I accept that the rental unit was not a valid address for service for the landlord, as it is the rental unit address and the landlord does not live there, the tenant submitted nothing to satisfy me that the address used on the 10 Day Notice was not a valid service address for the landlord or to corroborate their position that it was abandoned. Further to this, page two of the landlord's Proceeding Package contains another address for service for the landlord, which the tenant also made no attempt to use. Their lack of due diligence when reading the Proceeding Package is not a valid reason for failing to use this service address. Additionally, the tenant did not file their Application until April 11, 2025, well after the landlord's Proceeding Package was sent to them by registered mail and received. Therefore, I do not accept the tenant's testimony that they did not serve at this address because of the date upon which the Proceeding Package was served.

Finally, the tenant acknowledged that they made no attempt to contact the landlord to advise them that they had a package to serve or to request an address for service. I therefore find that the tenant failed to serve their Application and Proceeding Package on the landlord as required by the Act and Rules, and that they had no exceptional reason beyond their control for failing to do so. As a result, I dismissed their Application under rule 3.5 of the Rules as it was not served and it would therefore be significantly prejudicial and unfair to the landlord to accept it for consideration. As both parties had filed applications in relation to the 10 Day Notice, and the parties agreed that some rent and utilities were still outstanding, I also did not find it appropriate to adjourn to allow the tenants to affect service, nor did the tenant ask for an adjournment. Their claim for cancellation of the 10 Day Notice was therefore dismissed without leave to reapply as the time limit for disputing the Application was long passed. Their remaining claims were dismissed with leave to reapply.

In any event, I am satisfied that conclusive presumption under section 46(5) of the Act applies, and that I could not have granted the tenants the extension sought regardless. The tenant acknowledged personal receipt of the 10 Day Notice on March 4, 2025. They also acknowledged failing to pay the amounts set out on the 10 Day Notice within 5 days after receipt of the 10 Day Notice, and did not file the Application before me

seeking its cancellation until April 11, 2025. Even if I had found that the tenants' Proceeding Package was properly served, section 66(3) of the Act states that I must not extend the time limit to make an Application to dispute a notice to end a tenancy beyond the effective date of the notice. I therefore could not have granted the tenant the extension sought under section 66(1) of the Act, as the effective date of the 10 Day Notice was March 15, 2025, almost one month prior to the date of the tenants' Application seeking its cancellation.

Preliminary Matters

As set out above, the tenant's Application was dismissed due to lack of service. Some of their claims, such as their claim for cancellation of the 10 Day Notice, were dismissed without leave to reapply. The rest were dismissed with leave to reapply. Except for the landlord's claim for recovery of the filing fee, the matters in the landlord's Application that were not settled as set out below were dismissed with leave to reapply pursuant to rules 2.3 and 6.2 of the Rules. The landlord's claim for recovery of their filing fee was dismissed without leave to reapply.

Analysis

Under section 63 of the Act, the arbitrator may assist the parties to settle their dispute. If the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an Order pursuant to section 64.2 of the Act. During this hearing, the parties reached the following settlement agreement.

The parties agreed to the following terms of a final and binding resolution of the landlord's Application. They did so of their own free volition and without any element of coercion:

- 1) The parties agreed that the tenants owe \$10,500.00 for rent and utilities up to and including June 30, 2025, as set out below:
 - a) \$4,368.27 in outstanding utilities already invoiced and unpaid rent up to April 30, 2025;
 - b) \$3,065.86 for rent and flat-rate utilities for May of 2025; and
 - c) \$3,065.86 for rent and flat-rate utilities for June of 2025.
- 2) The parties agreed that if the tenants comply with the payment schedule set out below, the tenancy may continue until June 30, 2025, at which time the tenancy will end by way of mutual agreement. They also agreed that the landlord is to receive an unconditional Order of Possession for June 30, 2025.
- 3) Payment schedule agreed to:
 - a) \$4,368.27 must be paid on or before 11:59 pm on April 25, 2025;
 - b) \$3,065.86 must be paid on or before 11:59 pm on May 1, 2025, for May rent and utilities; and
 - c) \$3,065.86 must be paid on or before 11:59 pm on June 1, 2025, for June rent and utilities.
- 4) The parties agreed that if the tenants fail to abide by the above noted payment schedule, the landlord may serve and enforce the attached Conditional Order of

Possession. This Conditional Order of Possession is effective seven (7) days after service. Service timelines are not included and must therefore be account for in addition to the seven days. This Conditional Order of Possession **MUST NOT** be served or enforced unless the tenants fail to abide by the above noted payment schedule.

- 5) The parties agreed that the landlord will be granted a Conditional Monetary Order in the amount of \$10,500.00. This includes the \$4,368.27 currently owed, plus the \$3,065.86 owed on May 1, 2025, plus the \$3,065.86 owed June 1, 2025. This Conditional Monetary Order **MUST NOT** be served or enforced unless the tenants fail to abide by the above noted payment schedule. In such a case, the amount owed will depend on the month in which the tenants vacate the rental unit (AKA when the tenancy ends), regardless of the exact day in that month, as follows:
 - a) If they vacate in April of 2025, the tenants owe only \$4,368.27 of the \$10,500.00 set out on the Conditional Monetary Order, less any payments already made toward this amount;
 - b) If they vacate in May of 2025, the tenants owe \$7,434.13 of the \$10,500.00 set out on the Conditional Monetary Order, less any payments already made towards this amount; and
 - c) If they vacate in June of 2025, the tenants owe the full \$10,500.00 set out on the Conditional Monetary Order, less any payments already made towards this amount.
- 6) The parties agreed that the 10 Day Notice dated March 4, 2025, is cancelled and of no force or effect.

Conclusion

To give effect to the above settlement reached between the parties, as and as agreed to at the hearing, I grant the landlord:

An Unconditional Order of Possession effective at 1:00 pm on June 30, 2025. The landlord is provided with this Order and the tenants must be served with a copy of this Order by the landlord as soon as possible. Should the tenants fail to comply with this Order, it may be filed and enforced the Supreme Court of British Columbia.

A Conditional Order of Possession effective seven (7) days after service on the tenants. The landlord is provided with this Order and the tenants **MUST NOT** be served with a copy of this Order by the landlord unless they fail to abide by the payment schedule set out under section 3 of the settlement agreement. Should the tenants fail to comply with this Order once served, it may be filed and enforced the Supreme Court of British Columbia.

A Conditional Monetary Order in the amount of \$10,500.00. The landlord is provided with this Order and the tenants **MUST NOT** be served with a copy of this Order by the landlord unless they fail to abide by the payment schedule set out under section 3 of the settlement agreement. In such a case, the portion of

this amount owed by the tenants is to be determined in accordance with section 5 of the settlement agreement. Should the tenants fail to comply with this Order once served, it may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) as it is equal to or less than \$35,000.00.

If the tenants overhold past June 30, 2025, the landlord may make a claim, should they wish to do so, for compensation for overholding and/or loss of rent, if applicable, under section 57 of the Act.

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 23, 2025

Residential Tenancy Branch