

DECISION

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (Application) under the *Residential Tenancy Act* (the Act) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act; and
- an order under section 62 of the Act requiring the landlord to comply with the Act, regulation, or tenancy agreement.

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

- an Order of Possession based on the 10 Day Notice under sections 46 and 55 of the Act;
- a Monetary Order for unpaid rent under sections 7, 26, and 67 of the Act; and
- recovery of their \$100.00 filing fee under section 72 of the Act.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Agent M.T. (Agent) stated that the tenant E.H. was served in person on April 10, 2025, and that the tenant J.Z. was served by registered mail on April 10, 2025. They stated that the registered mail was sent to the rental unit address, and that the tenants are still in possession of the rental unit. The Agent submitted proof of service documents in support of these statements, such as registered mail receipts and Residential Tenancy Branch (Branch) forms. No one appeared on behalf of the tenants to refute this testimony.

I am satisfied based on the affirmed and undisputed evidence and testimony that E.M. was personally served on April 10, 2025. I am also satisfied based on the affirmed and undisputed evidence and testimony, as well as Canada Post tracking information, that the Proceeding Package was sent to J.Z. at the rental unit by registered mail on April 10, 2025. Although Canada Post tracking information shows that the registered mail has yet to be picked up, it also states that the registered mail was accepted at the post office on April 10, 2025, that a notice card was left on April 14, 2025, and that final notice was left on April 22, 2025. The refusal to accept or pick up registered mail does not override the deemed service provisions set out under section 90 of the Act. As no one appeared at the hearing on behalf of the tenants to explain why the registered mail has not been

picked up, I therefore deem J.Z. served with it on April 15, 2025, 5 days after it was sent to them at the rental unit address, pursuant to section 90(a) of the Act.

I verified that the hearing information in the Proceeding Package was correct, and noted that three agents for the landlord were able to attend the hearing using this information. I also verified via the teleconference console that no one other than myself and the agents had called into the hearing. Further to this, the Agent stated that the tenants contacted them by email yesterday requesting information about the hearing, which they then provided. As a result, and pursuant to rule 7.3 of the Residential Tenancy Branch Rules of Procedure (Rules), the hearing of the landlord's Application proceeded as scheduled, despite the absence of the tenants or an agent acting on their behalf.

Although the Agent acknowledged receipt of the tenants' Proceeding Package, no one appeared on behalf of the tenants in support of their claims and Application. As a result, I dismissed the tenants' Application, in its entirety, without leave to reapply, pursuant to rule 7.3 of the Rules.

Service of Evidence

The Agent stated that the documentary evidence before me, except for copies of email correspondence about the security deposit and the requirement for April's rent to be paid by money order, were served along with the Proceeding Package. I have already found the Proceeding Package was served on the tenants as set out above. As a result, and as no one appeared on behalf of the tenants to refute this testimony, I therefore found the documentary evidence before me from the landlord, except for the above noted emails, sufficiently served. I have therefore considered it in making this decision.

Although the Agent stated that the above noted email correspondence was sent to the tenants by email and registered mail on April 21, 2024, I have excluded it from consideration. There is no evidence it was received by the tenants within the landlord's evidence service deadline (April 15, 2025), or the evidence deadline for their response to the tenants' Application (April 22, 2025). Further to this, the evidence cannot even be deemed served under section 90 of the Act until after these deadlines.

Pursuant to rule 7.3 of the Rules, I have not considered any evidence submitted by the tenants in making this decision, as they failed to attend and present it, or to satisfy me that it was properly served on the landlord, both of which are required.

Preliminary Matters

At the hearing, the agents sought to include a \$25.00 late fee and a \$25.00 NSF fee, both of which were related to the late rent claimed and the 10 Day Notice, in the Application.

Having reviewed the tenancy agreement, file, and rent ledger, I am satisfied that these amounts are related to the claims already made, and that the tenants could reasonably

have anticipated that the landlord would also seek recovery of these amounts at the hearing. As a result, and in the absence of any objections from or on behalf of the tenants, I therefore amended the landlord's Application to include these amounts pursuant to rule 7.12 of the Rules.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recovery of unpaid rent?

Is the landlord entitled to recover NSF and late rent fees?

Is the landlord entitled to recovery of their filing fee?

Background and Evidence

The tenancy agreement before me states that the fixed term tenancy commenced on March 1, 2025, and is set to end on February 28, 2026. Rent is set at \$2,555.00, and is due on the 1st day of each month. A \$500.00 security deposit was also required under the tenancy agreement.

At the hearing, the Agent stated that the first security deposit payment and the first rent payment, both of which were made by electronic funds transfer (EFT), bounced. They stated that the tenants were served a different 10 Day Notice as a result, and subsequently successfully paid the security deposit, March rent, and the related NSF and late fees. The security deposit was paid on March 6, 2025, and March rent was paid on March 11, 2025.

The Agent stated that although the tenants attempted to pay April 2025 rent by EFT at the end of March, this payment also bounced on March 26, 2025. The Agent stated that the tenants were then advised on March 26, 2025, by e-mail that EFT payments would no longer be accepted and that April 2025 rent would need to be paid by money order. They stated that when rent was not paid, the 10 Day Notice was served on the tenant J.Z. on April 3, 2025. The Agent stated that the tenants have made no attempt to pay the April rent after their EFT bounced or since they were served with the 10 Day Notice, and are still in the rental unit.

The 10 Day Notice before me is on the Residential Tenancy Branch (Branch) form, is signed and dated April 3, 2025, lists the rental unit address, has an effective date of April 14, 2025, and states that as of April 1, 2025, the tenants owe \$2,555.00 in outstanding rent. The Agent stated that the landlord also wishes to recover the \$25.00 late fee and the \$25.00 NSF fee related to April 2025 rent.

Further to the above, the Agent stated that the landlord is seeking an Order of Possession for the rental unit as soon as possible, as they do not anticipate that the

tenants will pay the rent due tomorrow, May 1, 2025, and want to retain the security deposit in any interest accrued towards the amounts owed.

Analysis

Is the landlord entitled to recovery of unpaid rent?

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations, or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results. It also states that the party claiming the loss must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Act states that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

I am satisfied by the tenancy agreement and the uncontested and affirmed testimony and documentary evidence before me from the agents, that the tenants owe \$2,555.00 on the first day of each month under the tenancy agreement, and that they have not paid any rent for April of 2025. As no evidence or testimony has been presented that the tenants had a right under the Act to deduct or withhold this rent, I find that they did not. I am also satisfied that they remain in possession of the rental unit.

Pursuant to sections 7, 26, and 67 of the Act, I therefore grant the landlord recovery of the \$2,555.00 in outstanding rent sought for April of 2025.

Is the landlord entitled to an Order of Possession?

Section 46(1) of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The Agent stated that the 10 Day Notice was personally served on the tenant J.Z. on April 3, 2025, and submitted an RTB-34 proof of service form in support of this testimony. No one appeared on behalf of the tenants to refute this testimony, and I note that the tenants filed their own Application seeking cancellation of this same 10 Day Notice three days later, on April 6, 2025.

I am therefore satisfied by the landlord on a balance of probabilities that the tenants were served with the 10 Day Notice in person on April 3, 2025. As the tenants disputed the 10 Day Notice three days later, I find that conclusive presumption under section

46(5) of the Act does not apply. However, I have already found above that the tenants did not pay rent as required for April 2025, and that they did not have a right under the Act to deduct or withhold this rent. As the tenants did not have a right to deduct or withhold the rent, and did not pay the outstanding rent owed within five days after receiving the 10 Day Notice, I therefore find that the landlord has grounds under section 46 of the Act to end the tenancy by way of the 10 Day Notice.

I am satisfied that the 10 Day Notice before me complies with section 52 of the Act. As a result, and as the effective date of the 10 Day Notice has passed, I therefore grant the landlord an Order of Possession effective at 1:00 PM, seven days after service on the tenants, pursuant to sections 46, 55(1)(b) and 68(2) of the Act.

Is the landlord entitled to recover NSF and late rent fees?

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations, or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results. It also states that the party claiming the loss must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Act states that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

I am satisfied by the uncontested affirmed testimony and documentary evidence before me from the agents, including a rent Ledger, that the tenants' April 2025 rent payment was returned on March 26, 2025, due to insufficient funds. I am also satisfied that the tenants did not pay, or attempt to pay, the rent owed for April 2025, by any other means thereafter.

Section 7(1)(c) of the regulation states that a landlord may charge back to a tenant a service fee charged by a financial institution to the landlord for the return of a tenant's cheque. Section 7(1)(d) states that subject to subsection (2), a landlord may charge back to a tenant an administrative fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the regulation states that a landlord must not charge the fee described in paragraph (1)(d) unless the tenancy agreement provides for that fee.

As section 13 of the tenancy agreement permits the landlord to charge the tenant for the NSF and late fee, I therefore grant the landlord recovery of the \$50.00 sought pursuant to sections 7 and 67 of the Act, and section 7 of the regulation.

Is the landlord entitled to recovery of their filing fee?

Recovery of the filing fee is at my discretion. As the landlord was successful in their claims, I therefore grant them recovery of their \$100.00 filing fee from the tenants under section 72(1) of the Act.

Pursuant to section 72(2)(b), I also permit the landlord to retain the \$500.73 security deposit currently held in trust, in partial satisfaction of the amounts owed. This includes the \$500.00 paid on March 6, 2025, plus \$0.73 in interest accrued as of today's date.

Conclusion

The tenants' Application is dismissed, in its entirety, without leave to reapply.

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of **\$2,204.27** under the following terms:

Monetary Issue	Granted Amount
Unpaid rent for April 2025	\$2,555.00
NSF and late rent fees	\$50.00
Recovery of the filing fee	\$100.00
Less the security deposit and interest retained	-\$500.73
Total Amount	\$2,204.27

The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** by the landlord as soon as possible. Should the tenants fail to comply with this Order, 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.

Pursuant to section 55 of the Act, I grant an Order of Possession to the landlord effective at **1:00 PM, seven days after service of this Order** on the tenants. The landlord is provided with this Order in the above terms, and the tenants must be served with a copy of this Order by the landlord as soon as possible. Should the tenants or any occupant on the premises fail to comply with this Order, it may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 57(2) of the Act, a landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

Pursuant to section 57(3) of the Act, a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended, or for any loss suffered by a new tenant if their occupancy of the rental unit is prevented or delayed due to the overholding.

Pursuant to section 7 of the Act, a landlord may also seek compensation for other losses suffered. This may include but is not limited to, costs incurred to enforce the Order of Possession, such as bailiff fees, or lost rent over the balance of the fixed term.

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

Dated: April 30, 2025

Residential Tenancy Branch