

## **DECISION**

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- 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
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

### **Service of Applications and Evidence**

Both parties acknowledged that they were aware of each other’s cross applications but testified that there were issues with receiving each other’s evidentiary materials prior to the hearing date. After discussing the issue, both parties confirmed that that they were okay with exchanging evidence during the hearing by way of email, and proceeding with the scheduled hearing.

### **Issue(s) to be Decided**

Should the landlord’s 10 Day Notices be cancelled? If not is the landlord entitled to an Order of Possession for unpaid rent?

Are the parties entitled to the monetary orders for which they have applied?

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlord?

Are the parties entitled to recover the filing fee paid for their applications?

## **Background and Evidence**

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

This tenancy began on April 1, 2021. The tenant testified that monthly rent was originally set at \$1,100.00, payable on the first day of the month. Both parties confirmed that the landlord holds a security deposit of \$550.00 for this tenancy.

The landlord filed an application requesting an Order of Possession and Monetary Order for Unpaid Rent after serving the tenant with two 10 Day Notices to End Tenancy for Unpaid Rent. The landlord testified that they had served the tenant with a 10 Day Notice on April 4, 2025, and on May 26, 2025 by posting both notices on the tenant's door.

The tenant filed an application on May 26, 2025 disputing the May 26, 2025 10 Day Notice. The tenant testified that they did not receive the first 10 Day Notice dated April 4, 2025.

The tenant does not dispute that they had paid only \$1,100.00 for the months of April, May, and June 2025. The tenant argued that the landlord had failed to serve the tenant with any Notices of Rent Increases during this tenancy, and instead had "strong armed" the tenant into signing multiple tenancy agreements, with the latest one signed on December 8, 2023 for a fixed term from December 1, 2023 to November 30, 2024, with monthly rent set at \$1,400.00 per month.

The tenant requested the cancelation of the 10 Day Notice, as well as a determination that rent should be \$1,100.00. The tenant requested a monetary order for reimbursement of the rent paid above \$1,100.00 per month.

The landlord responded that the tenant had agreed to pay the rent as per the tenancy agreements. The landlord believed that rent was originally \$1,200.00, and is now \$1,400.00 per the latest tenancy agreement. The landlord requested a monetary order of \$900.00 in rent owed for April to June 2025, and an Order of Possession.

## **Analysis**

### **Is the Tenant entitled to an order regarding the Tenant(s) dispute of an additional rent increase by the Landlord?**

It is undisputed that the rent amount had changed during this tenancy. Although the landlord recalled the original rent to be \$1,200.00, the tenant argued that rent was originally \$1,100.00, and therefore this is the amount the tenant opted to pay for April, May, and June 2023 as they had believed that the rent was increased during this tenancy in a manner that does not comply with the Act.

I find that there were at least two tenancy agreements during this tenancy, as supported by the testimony and evidence before me. The original tenancy agreement began as a one year fixed term agreement starting on April 1, 2021, and the latest tenancy agreement for the period of December 1, 2023 to November 30, 2024, with monthly rent set at \$1,400.00 per month.

No copies of any Notices of Rent Increases were submitted in evidence by either party for this tenancy, but tenant had provided proof of rent payments showing that rent paid in April 2021 was \$1,100.00 as the tenant had recalled. Accordingly, I find that the original rent was indeed \$1,100.00, and not \$1,200.00.

The tenant submitted further proof of payment to show that as of January 2023, they were paying \$1,200.00 per month. I find that the evidence clearly shows that both parties had signed the new tenancy agreement on December 8, 2023 for a new fixed term of December 1, 2023 to November 30, 2024, with the rent now set at \$1,400.00 per month.

Residential Tenancy Policy Guideline #30 states the following about Fixed-term Tenancies and Rent Increases:

#### **D. RENEWING A FIXED TERM TENANCY AGREEMENT**

A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms. Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent Increases are met.

#### **H. RENT INCREASES AND FIXED TERM TENANCIES**

A rent increase between fixed term tenancy agreements with the same tenant for the same unit is subject to the rent increase provisions of the Legislation, including requirements for timing and notice. To raise the rent above the maximum annual allowable amount, the landlord must have either the tenant's written agreement or an order from an arbitrator. If the tenant agrees to an additional rent increase, the landlord must issue a Notice of Rent Increase along with a copy of the tenant's signed

agreement to the additional amount. The tenant must be given three full months' notice of the increase.

Based on the evidence and testimony before me, I find that the original fixed term had ended on March 2022, and continued on a month-to-month basis. The evidence before me does not show that the fixed term was renewed. The rent remained at \$1,100.00 until January 2023, when the tenant had started paying \$1,200.00 per month.

As noted above, a landlord may not renew a fixed term agreement with an increased amount of rent, in an attempt to avoid a landlord's obligations for a Notice of Rent Increase. In this case, however, I do not find that the evidence shows that the rent was increased between fixed-term tenancy agreements. I find that the parties had initially agreed on monthly rent of \$1,100.00 during the initial term, and the rent remained the same until both parties had subsequently agreed that rent would be \$1,200.00 as of January 1, 2023. At this time, the tenancy was month-to-month.

I find that this tenancy had continued on a month-to-month basis until both parties had decided to sign a new tenancy agreement in December 2023. As this tenancy as month-to-month, I not find the 2023 agreement amounts to a renewal of a fixed-term agreement.

I find that the tenant did not file any applications to dispute a rent increase prior to May 26, 2025. Furthermore, although the tenant claims that the landlord had "strong armed" the tenant into signing the latest tenancy agreement, I do not find this belief to be supported in evidence. I find that the tenant had failed to support how they were "strong armed", or that they had signed the latest tenancy agreement under duress or coercion.

I find the latest tenancy agreement was signed by both parties, and is therefore valid. I find that the tenancy agreement clearly showed that rent was set \$1,400.00 per month, which the tenant paid for over a year, without taking any issue, or filing for dispute until 2025. I do not find that any of the rent paid for this tenancy amounts to an increase in rent. I find that the tenant had clearly agreed to the rental amounts, and had paid them. I therefore dismiss the tenant's application disputing a rent increase, without leave to reapply. I also dismiss the tenant's monetary claims to recover any of the rent paid for this tenancy.

**Should the Landlord's 10 Day Notice be cancelled? If not, 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).

I find that the landlord had served a 10 Day Notice dated May 26, 2025, by posting that notice on the tenant's door. The tenant confirmed receipt of this 10 Day Notice, which they had disputed on May 26, 2025.

As noted above, I do not find that any of the rent paid for this tenancy had amounted to a rent increase, and I find that rent was set at \$1,400.00 as per the tenancy agreement signed on December 8, 2023. I do not find that the tenant had the right to deduct, or withhold any of the rent under the Act, or tenancy agreement, or as ordered by an Arbitrator.

I find that the tenant had failed to pay the outstanding rent on the 10 Day Notice within five days as required, and therefore I dismiss the tenant's application to cancel the 10 Day Notice. I find that the 10 Day Notice dated May 26, 2025 is valid, and complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Pursuant to section 55(3) of the *Act*, the director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order. RTB Policy Guideline 54 further states that an Arbitrator has the discretion to set an effective date. In consideration of the fact that the tenant has been residing at the rental until 2021, and had paid the majority of the rent as required, I order that the effective date of the Order of Possession be changed to July 31, 2025 in order to allow the tenant more time to move out. Until the end of the tenancy, both parties are bound by the tenancy agreement and the *Act*, which includes the tenant's obligation to pay the rent in full for July 2025 if the tenant remains in the rental unit past June 30, 2025.

The tenant did not dispute the fact that they had withheld rent in the amount of \$300.00 for each of the months of April, May, and June 2025. As the tenant did not have the right under the *Act*, or an order by an Arbitrator to withhold any portion of the rent, I, therefore, grant the landlord's application to recover the unpaid rent in the amount of \$900.00 for this period.

I note that the landlord had applied to recover the unpaid utilities, which was paid by the tenant. Accordingly, I dismiss the landlord's application to recover \$149.45 in utilities.

As the landlord was successful in their application, I am allowing the landlord to recover \$100.00 for the cost of this application. The tenant's application to recover the filing fee is dismissed, without leave to reapply.

## **Conclusion**

The tenant's entire application is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord **effective by 1:00 PM on July 31, 2025, 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.

The landlord is granted a monetary award in the amount of \$1,000.00 for recovery of the unpaid rent, plus the filing fee.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court

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: June 13, 2025

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Residential Tenancy Branch