

DECISION

Introduction

This hearing dealt with the Tenant's and Landlord's Applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice)
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement
- authorization to recover the filing fee for this application from the Landlord

The Landlord applied for:

- an Order of Possession based on the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice)
- a Monetary Order for unpaid rent and unpaid utilities
- authorization to recover the filing fee for this application from the Tenant

I find that the Landlord acknowledged being served with the Tenant's hearing package. I find that the Landlord is deemed served with the Tenant's evidence in person on September 11, 2023. I find that the Tenant acknowledged being served with the Landlord's hearing package and evidence.

Preliminary Matters

At the outset of the hearing, the Landlord testified that a decision had already been made about the end of the tenancy. The Landlord provided me with the file number. I reviewed the file and found that the parties had reached a settlement agreement, and an Order of Possession had been granted for August 31, 2023 in the previous hearing. The Tenant was no longer living in the rental unit at the time of this current hearing. The previous decision did not address the Landlord's claim for unpaid rent.

The Tenant's application to cancel the Landlord's 10 Day Notice and the Landlord's application for an Order of Possession are dismissed without leave to re-apply because these issues have already been decided on.

Rule 2.3 of the Rules of Procedure says that an Arbitrator may dismiss claims that are not related. The Tenant's application for a Monetary Order for compensation for damage or loss under the Act was dismissed with leave to re-apply at the start of the hearing, as it is not related to the primary claims about the 10 Day Notice and unpaid rent. The Tenant was informed that they may make an application about this issue in the future.

Issues to be decided

Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?

Is the Tenant entitled to recover the filing fee from the Landlord?

Is the Landlord entitled to recover the filing fee from the Tenant?

Facts and Analysis

This tenancy began on September 1, 2022, with a security deposit of \$275.00. This tenancy ended on August 31, 2023.

The Landlord testified that rent was set at \$1100.00 due the first of each month, and the Tenant was responsible for 25% of utilities. The Landlord did not return the security deposit to the Tenant after the tenancy ended. The Tenant always paid the rent by cheque. The Landlord never accepted cash for rent.

The Tenant did not pay their 25% share of the utilities from December 2022 to August 2023. The Landlord issued a 30 Day Written Demand for payment of utilities on April 8, 2023. The Tenant did not pay the utilities within 30 days. The Tenant did not pay the full rent for April 2023. The Landlord issued the first 10 Day Notice which was the subject of the previous application. The parties settled and the Landlord was granted an Order of Possession effective August 31, 2023.

The Tenant did not pay rent for May to July 2023. The Landlord issued a second 10 Day Notice to the Tenant by registered mail on July 13, 2023. The Tenant applied to cancel the 10 Day Notice within 5 days of receiving it. The Tenant did not pay rent for August 2023. The Tenant moved out of the rental unit on August 31, 2023. The total arrears are \$3890.45.

The Landlord provided documentary evidence to support their claims as follows:

- a signed copy of the tenancy agreement with rent set at \$1100.00, and 25% of utilities to be paid by the Tenant
- a summary of rent and utilities owing dated May 1, 2023, labelled "30 Day Demand Letter"
- utility bills from December 2022 to August 2023
- an RTB form 46 direct request worksheet
- a bank statement showing rent payments from January 2023 to April 2023

The Tenant testified as follows. The Tenancy agreement provided as evidence by the Landlord was edited by the Landlord after it was signed by the parties. The original tenancy agreement set the rent at \$950.00 per month, with no utilities owed by the tenant. The Tenant paid \$950.00 in rent from September 2022 to January 2023.

In January 2023, the Landlord demanded that the Tenant start paying \$1100.00 in rent and 25% of utilities or they would be evicted from the rental unit. The Tenant refused, but the Landlord threatened eviction and continued to demand the \$150 rent increase and utilities back to December 2022. The Tenant eventually paid the additional \$150.00 in rent, but refused to pay utilities because it was not included in the tenancy agreement.

The Tenant paid \$1100.00 for rent in February and March 2023. The Tenant paid \$1000.00 for rent in April 2023. The Tenant received the Landlord's summary of rent and utilities owing in April 2023. The Tenant received the first 10 Day Notice at the start of April 2023. The Tenant applied to cancel the 10 Day Notice within 5 days. The Landlord told the Tenant they would not accept cheques for rent after they gave the Tenant the 10 Day Notice. The Tenant refused to continue paying the illegal rent increase after the 10 Day Notice was issued.

The Tenant paid \$950.00 in cash for rent in May to July 2023. The Tenant provided the cash to the Landlord in person. The Tenant received the Landlord's 10 Day Notice in July 2023, and applied to cancel the Notice within 5 days of receiving it. The Tenant paid \$950.00 in cash for rent in August 2023.

The Tenant provided documentary evidence to support their claims including:

- bank statements showing cash withdrawals of \$950.00 at the start of each month from May 2023 to August 2023

Is the Landlord entitled to a Monetary Order for unpaid rent and utilities?

Section 75 of the Act says I may rely on any evidence that I consider to be necessary and appropriate, and relevant to the dispute resolution proceeding. At the start of the hearing the Landlord notified me of the previous application between the parties. The Tenant's evidence in this previous application was served to the Landlord, so the Landlord was aware of the evidence before this current hearing.

The Tenant's evidence from the previous application is necessary, appropriate, and relevant to this proceeding, so I will consider it in this decision. The Tenant provided the following evidence:

- a signed copy of the tenancy agreement with rent set at \$950.00, and no utilities owed by the Tenant
- a certified translation of a phone call between the parties about the Landlord's demand for a rent increase to \$1100.00 in February 2023
- the Tenant's bank statements showing rent payments by cheque of \$950.00 from September 2022 to January 2023

- text messages dated in January 2023 from the Landlord, demanding \$1100.00 in rent

The Landlord provided a bank statement showing the Tenant paid \$950.00 in rent in January 2023, then \$1100.00 in rent for February 2023. This evidence, the Tenant's evidence from the previous application, and the Tenant's testimony in this hearing convince me that the rent was \$950.00, and Landlord applied a rent increase of \$150.00 in February 2023. This is a 15.7% increase of rent, which is 13.7% above the allowable rent increase of 2% for 2023. I find that the Landlord was not allowed to increase the rent to \$1100.00. I find the rent for this tenancy was \$950.00.

The Landlord and Tenant each provided a different version of the Tenancy Agreement. The Tenant's evidence convinces me that the Tenant did not pay utilities at any time during this tenancy. The Landlord's evidence and testimony are about utilities not paid by the Tenant starting around the same time the Landlord demanded the \$150.00 rent increase. For these reasons and on a balance of probabilities, I find that the Tenancy Agreement provided by the Tenant is the agreement signed by the parties in September 2022. I find that there are no utilities owed by the Tenant.

The Landlord testified that the Tenant did not pay rent for May to August 2023. The Landlord did not provide bank statements or evidence for the months they claimed unpaid rent. The Tenant provided bank statements for May 2023 to August 2023, which showed cash withdrawals of \$950.00 at the start of each month. Based on the evidence of the parties and on a balance of probabilities, I find that the Tenant did pay \$950.00 in cash for rent for the months of May 2023 to August 2023.

The Landlord has not provided sufficient evidence that the Tenant failed to pay rent from May 2023 to August 2023. The Landlord has not convinced me that any utilities were owed by the Tenant during this tenancy. For these reasons, I dismiss the Landlord's claim for a Monetary Order for unpaid rent and unpaid utilities, without leave to reapply.

Is the Tenant entitled to recover the filing fee from the Landlord?

As the Tenant was successful in this application, I find the Tenant is entitled to recover the filing fee from the Landlord under section 72 of the Act.

Is the Landlord entitled to recover the filing fee from the Tenant?

As the Landlord was not successful in this application, I find that the Landlord is not entitled to recover their filing fee from the Tenant under section 72 of the Act.

Conclusion

The Landlord's claim for a Monetary Order for unpaid rent and unpaid utilities under sections 46 and 55 of the Act is dismissed, without leave to reapply.

The Landlord's application to recover the filing fee from the Tenant is dismissed, without leave to reapply.

I grant the Tenant a Monetary Order to recover their filing fee for this application. I Order the Landlord to pay **\$100.00** to the Tenant. The Tenant must serve this Order to the Landlord as soon as possible.

If the Landlord does not pay, this Order may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

The Tenant is reminded to provide the Landlord their forwarding address. The Landlord is reminded to return the Tenant's security deposit in accordance with section 38 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: October 18, 2023

Residential Tenancy Branch