

## **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)
- an order to suspend or set conditions on the landlord's right to enter the rental unit

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 request to retain the Tenant's security deposit in partial satisfaction of the Monetary Order
- authorization to recover the filing fee for this application from the Tenant

I find the Landlord acknowledged receiving the Tenant's notice of hearing package by registered mail on August 10, 2023. Based on the Landlord's undisputed testimony, I find the Tenant was deemed served with the Landlord's hearing package on September 4, 2023, five days after it was sent by registered mail. I find that the Tenant was served with Landlord's evidence on September 19, 2023, five days after it was sent by registered mail, in accordance with section 88 of the Act.

### **Issues to be decided**

Should the Landlord's 10 Day Notice be cancelled?

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the Landlord entitled to a Monetary Order for Unpaid rent? If yes, is the Landlord allowed to retain the Tenant's security deposit in partial satisfaction of the Monetary Order?

Is the Tenant entitled to an order to restrict the Landlord's right to enter the rental unit?

Is the Landlord entitled to recover their filing fee for this application from the Tenant?

## **Facts and Analysis**

This tenancy began on May 1, 2023, with a monthly rent of \$3,300.00 and with a security deposit of \$1650.00.

The Landlord testified as follows. The Tenant did not pay rent on August 1, 2023. The Tenant sent the Landlord a letter saying that they would move out of the rental unit on October 31, 2023, but they were having serious financial problems and would not pay any rent for the months of August to October 2023. The Landlord uploaded this letter as evidence.

The Landlord issued the 10 Day Notice on August 4, 2023, and served it in person to the Tenant. The Tenant did not pay the rent arrears. The Landlord made an offer to settle to the Tenant, saying that if the Tenant complied with the 10 Day Notice and moved out by August 15, 2023, the Landlord would not require the Tenant to pay rent for August 2023. The Tenant did not move out of the rental unit.

The Tenant did not pay rent in September and October 2023. The Tenant communicated to the Landlord that they would only pay the rent if the Landlord withdrew their application for an Order of Possession and Monetary Order. The Landlord did not agree to withdraw their application. The total arrears are \$9900.00.

### **Should the Landlord's 10 Day Notice be cancelled?**

Under section 26 of the Act, a tenant is required to pay rent. Based on the Landlord's undisputed evidence and testimony, I find that the Tenant breached the Act by not paying rent for August, September, and October 2023.

I find the 10 Day Notice meets the requirements for form and content under section 52 of the Act. I find the Landlord had a valid reason to issue the 10 Day Notice under section 46 of the Act.

For the above reasons, the Tenant's application to cancel the Landlord's 10 Day Notice is dismissed, without leave to reapply.

### **Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?**

I find the Landlord is entitled to an Order of Possession under sections 46 and 55 of the Act.

### **Is the Landlord entitled to a Monetary Order for Unpaid rent? If yes, is the Landlord allowed to retain the Tenant's security deposit in partial satisfaction of the Monetary Order?**

I find the Tenant failed to pay rent in August, September, and October 2023. I find the Landlord is entitled to a Monetary Order for unpaid rent under section 55(1.1) of the Act.

I find the Landlord is entitled to retain the Tenant's security deposit in partial satisfaction of the Monetary Order for Unpaid rent.

**Is the Tenant entitled to an order to restrict the Landlord's right to enter the rental unit?**

As this tenancy is ending in accordance with the Act, the Tenant's application to restrict the Landlord's right to enter the rental unit is dismissed, without leave to re-apply.

**Is the Landlord entitled to recover their filing fee for this application from the Tenant?**

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

**Conclusion**

**Landlord's Order of Possession**

Under sections 46 and 55 of the Act, I find the Landlord is entitled to an Order of Possession. This Order is effective **2 Days after serving this order to the Tenant**, and the Tenant and anyone else occupying the unit must move out 2 days after receiving this Order.

If the Tenant does not move out within 2 days, this Order can be filed in the Supreme Court and enforced as an order of that court. The costs of this enforcement are recoverable from the tenant.

The Tenant is reminded that they are obligated to leave the rental unit reasonably clean and free from damage. The Landlord is reminded to schedule and complete a move out inspection.

**Monetary Order for Unpaid Rent**

Under sections 55(1.1) and 72 of the Act, I find that the Landlord is entitled to a Monetary Order for the unpaid rent of \$9900.00. I Order that the Landlord retain the security deposit of \$1650.00 with interest in partial satisfaction of this debt. I Order the Tenant to pay the Landlord the balance due of **\$8335.63**.

This order must be served to the Tenant. If the Tenant does not pay, this Order may be filed and enforced in the Small Claims Division of the Provincial Court of British Columbia.

<b>Monetary Issue</b>	<b>Granted Amount</b>
Unpaid rent	\$9900.00
Security Deposit with interest	- \$1664.37
<b>Total Amount</b>	<b>\$8335.63</b>

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 13, 2023

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Residential Tenancy Branch