

## **DECISION**

### **Introduction**

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act
- an order for the landlord to provide services or facilities required by law under section 27 of the Act
- an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

Although the Landlord indicated he was not served the Proceeding Package by the Tenant, I noted that the Tenant sent the package to the address provided by the Landlord on his Notice. I am satisfied that the Landlord confirmed was duly served in accordance with the Act.

As the Tenant acknowledged service of the Landlord's Notice of Dispute Resolution Proceeding Package and did not raise any concerns regarding service, I find the Tenant was served in accordance with the Act.

### **Service of Evidence**

Based on the submissions before me, I find that the tenant's evidence was served to the landlord in accordance with section 88 of the Act.

Although the Residential Tenancy Branch received evidence from the landlord, the Tenant stated that she did not. I discussed the content of the Landlord's evidence with the Tenant who did not object to the matter proceeding. I explained that I would reconsider the issue of the Landlord's failure to serve her documentary evidence if it appeared that my decision with respect to a particular issue might depend upon acceptance of evidence that was unavailable to the Tenant. I decided to proceed, I noted that the primary issue of unpaid was not contested by the Tenant.

## **Preliminary Matters**

The Landlord sought to increase their monetary claim from \$3,200.00 to \$4,800.00 to reflect the tenant's failure to pay rent for October as well.

*Residential Tenancy Branch Rules of Procedure*, Rule 4.2, states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment as this was clearly rent that the tenant would have known about and resulted since the landlord submitted the application.

## **Issue to be Decided**

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to provide services or facilities required by law under section 27 of the Act?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

## **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.

Evidence was provided showing that the monthly rent was \$1,600.00, due on first day of the month, with a security deposit in the amount of \$800.00.

The parties agreed that the Tenant did not pay rent for the months of August, September, and October.

The Tenant explained that he had incurred a number of expenses in the course of remediating the property as a result of fire damage and that he had withheld rent while attempting to negotiate reimbursement for these. These expenses were not part of the Tenant's current claim. The Tenant indicated that he will seek to recover his expenses in a subsequent application.

The Tenant added that he had since obtained new accommodation and was in the process of moving out of the rental unit.

## **Analysis**

### **Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?**

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing;
- be signed and dated by the landlord giving the notice;
- give the address of the rental unit;
- state the effective date of the notice;
- state the grounds for ending the tenancy, and
- be in the approved (Residential Tenancy Branch) form.

I have reviewed the 10 Day Notice and note that it is in the approved form, signed and dated by the Landlord, and that it indicates that there is unpaid rent. I find that it complies with section 52 of the Act.

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).

The Landlord attached the 10 Day Notice to the Tenant's door on August 18. I find that it was served on August 21 and that the tenant had until August 26, to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenant completed an Application for Dispute Resolution on August 23, within the timeframe permitted.

In his application, the Tenant did not dispute that he failed to pay rent for the months of August, September, and October. His explanation was that he had incurred a number of expenses in the course of remediating the property as a result of fire damage and that he wished to be reimbursed for this. The Tenant indicated that he will seek to recover his expenses in a subsequent application. He added that he had since obtained new accommodation and was in the process of moving out of the rental unit.

For the above reasons, the tenant's application for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act is dismissed, without leave to reapply.

### **Is the landlord entitled to an Order of Possession based on a Notice to End Tenancy?**

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find that the landlord is entitled to an Order of Possession.

**Is the landlord entitled to a Monetary Order for unpaid rent?**

Section 55(1.1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy under section 46 of the Act for non-payment of rent, and the application is dismissed, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent if the notice complies with section 52 of the Act. I find that the Notice complies with section 52 of the Act.

Therefore, I find the landlord is entitled to a Monetary Order for unpaid rent in the amount of \$4,800.00. This amount was calculated as follows:

August rent	\$1,600.00
September rent	\$1,600.00
October rent	<u>\$1,600.00</u>
<b>Total</b>	<b>\$4,800.00</b>

The Landlord continues to hold the tenant's security deposit of \$800.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain the Tenant's security deposit in partial satisfaction of the monetary orders.

**Is the Tenant entitled to an order requiring the landlord to provide services or facilities required by law under section 27 of the Act?**

Section 27 of the act states that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement.

As the Tenant has already confirmed his intention to vacate the premises imminently, I find the tenant's application for an order requiring the landlord to provide services or facilities required by law under section 27 is redundant. It is dismissed without leave to reapply.

**Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?**

Section 70 of the Act states for an Arbitrator to suspend or set conditions on a landlord's right to enter the rental unit if they are satisfied that the landlord is likely to enter the rental unit in contravention of section 29 of the Act, which requires the landlord to give 24 hours written notice before entering the rental unit. The arbitrator may authorize the

tenant to change the locks, keys or other means that allow access to the rental unit, and prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

As the Tenant has already confirmed his intention to vacate the premises imminently, I find the tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit is redundant. It is dismissed without leave to reapply.

**Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement?**

Section 62 of the act states that an arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

As the Tenant has already confirmed his intention to vacate the premises imminently, I find the tenant's application for an order requiring the landlord to comply with the Act, regulation or tenancy agreement is redundant. It is dismissed without leave to reapply.

**Conclusion**

I grant an Order of Possession to the landlord **effective two (2) days after service of this Order on the landlord(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.

I grant the landlord a Monetary Order in the amount of **\$4,000.00** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent under section 55 of the Act	\$4,800.00
Security Deposit	-\$800.00
<b>Total Amount</b>	<b>\$4,000.00</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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.

The tenant's application for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act is dismissed, without leave to reapply.

The tenant's application for an order requiring the landlord to provide services or facilities required by law under section 27 of the Act is dismissed, without leave to reapply.

The tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit is dismissed, without leave to reapply.

The tenant's application for an order requiring the landlord to comply with the Act, regulation or tenancy agreement is dismissed, without leave to reapply.

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 17, 2023

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Residential Tenancy Branch