

## **DECISION**

### **Introduction**

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This hearing dealt with the Tenant's Application dated August 24, 2023 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 repairs to be made to the unit under section 32 of the Act
- a monetary order to recover the filing fee under section 72 of the Act

It also dealt with the Landlord's Application dated September 6, 2023 for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an order of possession following issuance of a 10 Day Notice to End Tenancy for Unpaid Rent under sections 46 and 55 of the Act
- a monetary order for compensation for unpaid rent under sections 46 and 55 of the Act
- a monetary order to recover the filing fee under section 72 of the Act

The tenant and agents for the tenant and the landlord attended both hearings.

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

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I am satisfied that the Proceeding Packages were served in accordance with the Act.

### **Evidence**

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I am satisfied that all written evidence relied upon was served in accordance with the Act.

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

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Should the 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

If the 10 Day Notice is cancelled, is the tenant entitled to an order for repairs?

Is the landlord entitled to monetary compensation for unpaid rent and/or utilities?

Is the landlord or the tenant entitled to recover the filing fee for this application from the tenant?

## **Background and Evidence**

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Evidence was provided showing that this tenancy began 2016 or 2017, with a monthly rent of \$6,500.00, payable on the first of the month. A security deposit in the amount of \$3,250.00 was paid to the landlord.

In 2020, around the start of the pandemic, the landlord's agent said that the parties agreed that because of the tenant's financial situation, he could defer payment of rent to the following year.

The landlord said that the following payments were made between 2020-2023:

Year 2020		
date	rent amount	paid
Jan	6500	6500
feb	6500	6500
Mar	6500	0
Apr	6500	0
May	6500	2000
Jun	6500	0
Jul	6500	0
Aug	6500	2000
Sep	6500	0
Oct	6500	0
Nov	6500	4000
Dec	6500	3000

Year 2021		
date	rent amount	paid
Jan	6500	0
feb	6500	0
Mar	6500	4000
Apr	6500	5000
May	6500	5000
Jun	6500	5000
Jul	6500	5000
Aug	6500	5000
Sep	6500	0
Oct	6500	10000
Nov	6500	5000
Dec	6500	5000

Year 2022		
date	rent amount	paid
Jan	6500	5000
feb	6500	6045
Mar	6500	6000
Apr	6500	6000
May	6500	6000
Jun	6500	8000
Jul	6500	8000
Aug	6500	8000
Sep	6500	8000
Oct	6500	8000
Nov	6500	4000
Dec	6500	4000



Year 2023		
date	rent amount	paid
Jan	6500	0
feb	6500	0
Mar	6500	8000
Apr	6500	0
May	6500	0
Jun	6500	0
Jul	6500	0
Aug	6500	0
Sep	6500	0
Oct	6500	0

In total, the landlord said the tenant now owes \$147,455.00 in unpaid rent. The landlord's agent said that the rental arrears were calculated through a review of records by the landlord's accountant.

The tenant gave evidence that because of the state of the property, the parties entered into an "ad hoc" arrangement, where rent would be determined between them on a monthly basis. In particular, the tenant referred to the outside area of the house being in a state of disrepair, there being regular leaks which caused damage to his furniture, and appliances that needed to be replaced.

The landlord served the tenants with the 10 Day Notice on August 22, 2023 by posting a copy on the door. #RTB-30 was used, it was signed and dated by the landlord, gave the address of the rental unit, and stated the effective date of September 5, 2023.

The tenant filed for dispute resolution on August 24, 2023. The tenant did not make any rent payments following receipt of the 10 Day Notice.

## Analysis

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### **Should the 10 Day Notice be cancelled? If not is the landlord entitled to an order of possession?**

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under 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 a tenant who has received a 10 Day Notice does not pay

the rent or make an application for dispute resolution, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The tenant disputed the 10 Day Notice within 5 days. However, I find that the tenant did not pay rent on many occasions, including 9 out of 10 months in 2023. I find that the landlord has met his burden in convincing me that \$127,955.00 was due in outstanding rent on August 1, 2023. While the tenant's agent is correct that the landlord's evidence constitutes hearsay, the traditional rules of evidence do not apply in the RTB. The landlord's agent explained that the document was created by the landlord's accountant following a lengthy review of records. The tenant did not dispute that numbers submitted by the landlord and actually admitted on several occasions during the hearing that he had not paid rent in full.

I do not accept the tenant's evidence that the tenancy agreement was changed and that the parties agreed to an "ad hoc" determination of monthly rent because of the state of the property. The tenant had the burden of proving this. No documents were submitted supporting this "ad hoc" agreement, despite the tenant's claim that rent was agreed to by text message on a monthly basis.

The tenant's agent also submitted that rent should be reduced due to the state of the property. The Act provides that a tenant can apply for monetary compensation for loss of quiet enjoyment or services promised under a tenancy agreement but not provided. The Act also allows tenants to apply for a rent reduction. However, tenants cannot unilaterally determine that they should pay less because of the state of a property, nor do I have the authority to retroactively fix rent at a lower amount because the unit was damaged.

The 10 Day Notice is valid. I grant the landlord an Order of Possession.

**If the 10 Day Notice is cancelled, is the tenant entitled to an order for repairs?**

Because the tenancy is ending, I do not need to consider this issue.

**Is the landlord entitled to monetary compensation for unpaid rent and/or utilities?**

The landlord is entitled to unpaid rent. Because my jurisdiction is limited to the *Small Claims Court* limit, the landlord accepted at the hearing that any monetary order would be capped at \$35,000 and waived any future claim to the excess. I grant the landlord a monetary order totaling \$35,000. I also authorize the landlord to retain the tenant's deposit.

**Is the landlord entitled to recover the filing fee for this application from the tenant?**

Normally, the landlord would be entitled to recover the filing fee. However, because I am granting a monetary order totaling \$35,000, I cannot also grant recovery of the filing fee.

## Conclusion

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The tenant's application is dismissed without leave to reapply. The landlord's application is granted.

I grant an Order of Possession to the landlord. I asked the parties for submissions on an appropriate date for an order of possession. Because the tenant is elderly and has health issues, I grant the landlord an order of possession **effective on November 30, 2023 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.

I grant a **\$35,000.00** Monetary Order to the landlord. The tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply, it may be enforced in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: October 30, 2023

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Residential Tenancy Branch