

## **DECISION**

### **Introduction**

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

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") pursuant to section 46.

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

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") under sections 46 and 55 of the Act
- A Monetary Order for unpaid rent under section 67 of the Act
- Authorization to recover the filing fee for this application from the tenant under section 72 of the Act

### **Preliminary Issue**

- Corrected Landlord's Name

Updated name of Landlord to legal business name.

- Increase Monetary Order Claim for Unpaid Rent

At the outset of the hearing the Landlord's Agent LC (the "Landlord's Agent") sought to increase their monetary claim to \$2,325.00 to reflect the Tenants failure to pay \$1,550.00 in monthly rent for October 2023, the additional month of unpaid rent waiting for this hearing.

*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(s) to be Decided**

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

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

## **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 this tenancy began around May 2022 and then a new tenancy agreement was entered into on September 1, 2022, with a monthly rent of \$1,550.00, due on first day of the month, with a security deposit in the amount of \$675.00.

The Landlord served a 10-Day Notice on the Tenants on September 3, 2023, for partial unpaid rent for September 2023. The Tenants disputed that 10-Day Notice and the Landlord filed a cross application asking for an Order of Possession and Monetary Order for the unpaid rent.

The undisputed evidence of the Landlord's Agent is that on July 29, 2023, the Tenants advised they would be moving out either September 1, 2023, or October 1, 2023, but they did not provide an exact date. Then on September 1, 2023, the Tenants only paid \$775.00 and indicated they may move out on September 15, 2023 but if they don't they will pay the remainder owed for rent.

The Landlord's Agent argued this was not proper notice and the Tenants were required to pay full rent for September 2023. The Landlord served the 10-Day Notice on September 3, 2023. The undisputed evidence of the Landlord's Agent is that the Tenants have continued to occupy the rental unit and did not pay rent for the remainder of September 2023 or October 2023. The Landlord's Agent argued the Tenants owe \$2,325.00 for unpaid rent.

## **Analysis**

**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 does 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 10-Day Notice was duly served to the Tenants on September 3, 2023, and that the Tenants had until September 8, 2023, to dispute the 10-Day Notice or to pay the full amount of the arrears. The Tenants disputed the 10-Day Notice within the timeframe required.

The Tenant did not attend the hearing to present any legal reason for withholding rent.

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Commencement of the hearing:** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

For the above reason, the Tenant's application for cancellation of 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 10-Day 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.

The Tenants paid only a half of the rent owed for September 2023 and indicated they might move out September 15, 2023, and if they don't, they will pay the remainder of the rent owed. I find that this was a vague indication of a potential move out date and improper notice. I find that at the time the Landlord served the 10-Day Notice the Tenants owed the Landlord the unpaid half of September 2023 rent.

While the 10-Day Notice was issued for unpaid rent for September 2023, the undisputed evidence of the Landlord's Agent is that the Tenants continued to occupy the rental unit and failed to pay rent for October 2023. Therefore, I find the Landlord is entitled to a

Monetary Order for unpaid rent for \$2,325.00 representing the unpaid rent for half of September 2023 and October 2023.

Pursuant to section 72 of the Act, I authorize the Landlord to retain the security deposit of \$675.00 in partial satisfaction of the unpaid rent owed.

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

As the Landlord was successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

**Conclusion**

I grant an Order of Possession to the Landlord **effective two (2) days after service of this Order on the Tenants**. Should the Tenants 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 **\$1,750.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$2,325.00
deduction of the security deposit under section 72 of the Act	-\$675.00
authorization to recover the filing fee for this application from the tenant under section 72 of the Act	\$100.00
<b>Total Amount</b>	<b>\$1,750.00</b>

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: October 27, 2023

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Residential Tenancy Branch