

## **DECISION**

### **Introduction**

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Pursuant to section 58 of the Act, I was designated to hear cross applications.

The Tenant applied on September 13, 2023 for more time to dispute two notices to end tenancy. The Tenant stated they wanted to withdraw their application, the Landlord did not object. The Tenant is not granted leave to reapply because the statutory deadline to dispute the notices has expired.

On September 13, 2023, the Landlord applied for:

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

### **Service of Notice of Dispute Resolution Proceeding and Evidence**

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The Tenant and the Landlord both attended the hearing where I confirmed that there were no issues with service of the application and the evidence. In accordance with sections 88 and 89 of the Act, I find the Tenant received the Landlord’s application.

### **Issues to be Decided**

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Does the Notice end the tenancy?

Is the Landlord entitled to a monetary award for unpaid rent?

Is the Landlord entitled to recover the filing fee?

### **Background and Evidence**

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I have examined the evidence and heard the testimony of all parties. For the decision, I will only refer to what I find relevant for my decision.

The written tenancy agreement establishes that the tenancy began on January 1, 2023, scheduled to end on December 31, 2023. Rent is \$1,600.00 per month and payable before the first day of each month. The Tenant says they normally pay rent by cash or email money transfer. The Tenant has paid a \$800.00 security deposit to the Landlord. As per the tenancy agreement, for every instance of a late payment of rent, the Landlord may charge the Tenant with a \$50.00 penalty.

The Landlord testified the Tenant has not paid September and October rent, in addition to not having paid the penalties for late payment of rent. The Landlord said they do not want to continue the tenancy and have already begun the search for potential tenants. The Landlord estimated the total amount owing to be \$3,300.00, this amount includes the rent amount and the penalties for late payment. Lastly, the Landlord mentioned October 31, 2023 as an appropriate date for possession of the rental unit.

The Tenant did not dispute the fact that September and October's rent has not been paid, nor did the Tenant dispute the penalties for the late payment of rent. The Tenant mentioned October 31, 2023 as an appropriate date for the return of possession of the rental unit to the Landlord as the Tenant stated they have already found accommodation for November 2023.

## **Analysis**

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### **Does the Notice end the tenancy?**

I find the Landlord had a valid reason to give the Notice to End Tenancy to the Tenant, based on the Tenant's own admission that they did not pay rent for September and October. I have reviewed the Notice and find it complies with section 52 of the Act in form and content.

I find the Landlord is entitled to an Order of Possession and a monetary order pursuant to section 55 of the Act.

### **Is the Landlord entitled to a monetary order for unpaid rent?**

Under section 46 of the Act for non-payment of rent, the Arbitrator must grant the landlord an order requiring the repayment of the unpaid rent. In this case, it is undisputed the \$3,200.00 for September and October rent was not paid.

Under section 72(2)(b) of the Act, I order the Landlord to retain the \$800.00 security deposit plus \$12.99 interest in partial satisfaction of the unpaid rent and late fees.

The tenancy agreement's penalty of \$50.00 for late rent is not in compliance with section 7(1)(d) of the Residential Tenancy Regulation. The maximum fee that may be charged by the Landlord is \$25.00. Since the Tenant failed to pay rent for two months, the Landlord may only claim \$50.00.

The breakdown of money owed to the Landlord by the Tenant is as follows:

- \$3,200.00 of unpaid rent
- \$50.00 late payment fee
- 812.99 security deposit including interest, to be credited towards unpaid rent.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$2,437.01.

### **Is the Landlord entitled to recovery the filing fee?**

Since the Landlord was successful in their application, I find the Landlord is entitled to recover \$100 for the cost of filing an application.

### **Conclusion**

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The Tenant's cross application is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord effective on October 31, 2023, after service of this Order on the Tenant. Should the Tenant or anyone at the rental unit 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 \$2,537.01 Monetary Order for unpaid rent, late fees, and the filing fee.

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 19, 2023

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Residential Tenancy Branch