

DECISION

Introduction

The applicant in this matter, AW, briefly resided with the Tenant, MG, who has vacated the unit. AW remained in the rental unit after MG's departure. The Landlord said that AW is not a Tenant. For clarity, I have referred to AW as the Applicant in my decision.

This hearing dealt with an 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 (10 Day Notice) under sections 46 and 55 of the Act
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act

This also hearing 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 (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent and/or utilities under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

No one attended the hearing for the Tenant.

F.C. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

In her application the Applicant indicated that her notice of dispute resolution proceeding was served by way of placing it in the Landlord's mailbox. The Applicant did not attend the hearing. The Landlord denied receiving a notice of dispute resolution proceeding from either the Tenant or the Applicant. I find that the Landlord was not served with the Applicant's notice of dispute resolution proceeding. As the Landlord was in attendance and ready to proceed, this hearing was conducted in the absence of the Applicant pursuant to Rule of Procedure 7.3.

The Landlord indicated that the Applicant was served with the Notice of Dispute Resolution Proceeding in person, in the presence of a witness, on January 5, 2023. The individual who served the notice attended the hearing. I find that the Tenant was served in person on January 5, 2023, in accordance with section 89(2) of the Act.

Service of Evidence

The Landlord indicated that he was not served with any evidence by either the Tenant or the Applicant. The Tenant did not provide any proof of service of evidence to the Residential Tenancy Branch. I find that the Tenant did not serve the Landlord with any evidence.

The Landlord provided evidence to the Residential Tenancy Branch. The Tenant did not attend the hearing and so the issue of whether the Tenant was served with the Landlord's evidence was not raised.

Preliminary Matters

Monetary Claim increased

The Landlord sought to increase their monetary claim by \$2,700.00 to reflect the Tenant's failure to pay rent for January 2023 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.

Issues to be Decided

Should the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

Should the Landlord's One Month Notice to End Tenancy for Cause be cancelled?

Is the Landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the Landlord entitled to a Monetary Order for unpaid rent or utilities?

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

Background and Evidence

I have reviewed all evidence but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on November 1, 2022, with a monthly rent of \$2,700.00, due on the first day of the month. Although required to provide a security deposit in the amount of \$1,400.00 on November 1, 2022, the Tenants did not do so.

The Tenants were MG and AH. The Landlord learned that MG's friend AW had been staying in the unit in November 2023. The Landlord did not consent to this.

On December 13, 2023, the Landlord personally served MG with a 10 Day Notice to end tenancy for unpaid rent and utilities. The Tenant claimed that this service occurred on December 14, 2023.

MG and AH informed the Landlord that AW's behaviour had made residing at the unit untenable and they had vacated the rental unit in December for this reason. AW remained in the unit.

At the hearing the Landlord stated that he was owed rent in the amount \$2,700.00 for August 2023, and another \$2,700.00 for January 2024.

The Landlord said that under the tenancy agreement the Tenant agreed to reimburse him for the cost of utilities as they were unable to put the utilities in their names. He claimed that he was owed \$5,187.00 for the period spanning November 2022 through January 2024, with respect to payments made to Fortis electric and Fortis gas.

The Landlord said that he was also owed an additional \$2,197.00 with respect to Internet and cable TV charges he had incurred for the period spanning November 2022 through December 2023, at a cost of \$169.00 per month.

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(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).

I find that the 10 Day Notice was delivered to the Tenant on December 14, 2023, in person. The Tenant had until December 19, 2023, to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenant disputed the notice on December 22, 2023.

Based on the evidence before me, I find the Tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application under section 46(4) of the Act within the same timeframe. In accordance with section 46(5) of the Act, due to the failure of the Tenant to take either of these actions within five days, I find the Tenant is conclusively presumed to have accepted the end of this tenancy on December 27, 2023, the effective date of the 10 Day Notice. In this case, the Tenant and anyone on the premises were required to vacate the premises by December 27, 2023.

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

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

As the tenancy is ending by way of the 10 Day Notice for unpaid rent, the remainder of the Tenant's application to dismiss the application is moot.

For this reason, the Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for End of Employment (One Month Notice) 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?

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 Landlord provided a copy of the tenancy agreement confirming the monthly rental amount of \$2,700.00.

I find the Landlord is owed rent in the amount \$5,400.00, with respect to \$2,700.00 in unpaid for the months of August 2023, and January 2024. Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$5,400.00.

Under section 67 of the Act and in conjunction with Policy Guideline #16, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Utilities- Natural Gas and Electricity

The Landlord claimed that he was owed \$5,187.00 for the period spanning November 2022 through January 2024, with respect to payments made to for electricity and natural gas. The Landlord said that under the tenancy agreement the Tenants agreed to reimburse him for the cost of utilities as they were unable to put the utilities in their names.

I find that the Tenants were obligated to reimburse the Landlord for costs incurred by the Landlord in relation to these utilities. In reaching this conclusion, I note that the Tenants did agree to reimburse the Landlord under the terms of the tenancy agreement.

However, the Landlord did not provide any documentation, such as invoices or receipts, in support of this significantly large claim for unpaid utilities.

I find that the Landlord has failed to prove on a balance of probabilities both that the loss exists, and the actual amount to compensate for the loss.

The Landlord's claim for compensation with respect to utilities, consisting of natural gas and electricity, is dismissed without leave to reapply.

Internet and Cable Television services

The Landlord claimed that the Tenant owed \$2,197.00 with respect to Internet and cable TV charges he had incurred for the period spanning November 2022 through December 2023, at a cost of \$169.00 per month. He said that these were part of the utilities he provided that they were obligated to reimburse.

I find the Landlord's argument that the Tenant's obligation to reimburse him for utilities also included internet and cable television services to be unconvincing. I also note that the Landlord did not provide any documentation, such as invoices or receipts, in support of this significantly large claim for unpaid internet and cable television services.

I find that the Landlord has failed to prove on a balance of probabilities both that the loss exists, and the actual amount to compensate for the loss.

The Landlord's claim for compensation with respect to internet and cable television services is dismissed without leave to reapply.

I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$5,400.00.

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 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 the Landlord a Monetary Order in the amount of **\$5,500.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$5,400.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$5,500.00

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.

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: February 12, 2024

Residential Tenancy Branch