

## **DECISION**

### **Introduction**

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

- cancellation of a one month notice to end tenancy for cause dated June 3, 2024 (the "One Month Notice") under section 47 of the Act;
- cancellation of a 10 day notice to end tenancy for unpaid rent dated July 3, 2024 (the "10 Day Notice") under section 46 of the Act; and
- authorization to recover the Tenant's filing fees from the Landlords under section 72(1) of the Act.

The Tenant, the respondent AH (property manager and agent for the corporate respondent), the owner MM, and the Landlords' witness CB attended this hearing. All attendees gave testimony under oath.

### **Preliminary Matters**

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

AH confirmed receipt of the Tenant's notice of dispute resolution proceeding packages. Aside from a copy of the 10 Day Notice, the Tenant did not submit documentary evidence for this hearing. The Tenant indicated that she had some text message correspondence with AH about subletting and pets, which the Tenant had wanted to submit as evidence. As the deadline for evidence submission has already passed, the Tenant was directed to give testimony about the text message correspondence instead.

The Tenant confirmed receipt of the Landlords' evidence package.

#### **Clarification of Respondents and Rental Unit Address**

The respondent Landlords are AH, the owner's property manager, and AH's property management firm. AH agreed that both may be named as the respondents.

The parties' evidence suggests that the rental unit is the upper suite of a house, described as unit A.

Based on the foregoing, I have unified the style of cause across the two applications and clarified the rental unit address.

## **Fee Waivers**

The Tenant confirmed that she had obtained fee waivers for her applications. Accordingly, I dismiss the Tenant's claims for recovery of the filing fees without leave to re-apply.

## **Issues to be Decided**

Should the One Month Notice and 10 Day Notice be cancelled?

Are the Landlords entitled to an Order of Possession?

Are the Landlords entitled to compensation for unpaid rent?

## **Background and Evidence**

I have reviewed all the evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

This tenancy commenced on May 1, 2023. Rent is \$3,500.00 due on the first day of each month. The Tenant paid a security deposit of \$1,750.00.

The Landlords issued the One Month Notice on June 3, 2024 with an effective date of July 31, 2024. The stated reasons for ending the tenancy are:

- Tenant has allowed an unreasonable number of occupants in the unit
- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk

The details of cause on the One Month Notice are:

Altering the property by drilling holes in the home for surveillance cameras  
Repeated late payments  
2 cats on the premises, this home is not pet friendly, stated in the lease.

On July 3, 2024, the Landlords issued the 10 Day Notice with an effective date of July 16, 2024. According to this notice, the Tenant has failed to pay rent of \$3,500.00 due on July 1, 2024 and \$891.26 for a water bill following written demand on July 1, 2024.

MM gave the following testimony:

- The Tenant has kept two cats in the rental unit for a long time, even though the unit is supposed to be pet free. The Tenant said a neighbour would take the cats, but that did not happen.
- The Tenant is consistently late with payment of rent. The Tenant has not paid rent for July or August 2024. The Tenant has not paid her portion (70%) of the water bill from April 30, 2023 to May 31, 2024.
- The Tenant has people coming and going from the rental unit. There were police visits to the house due to suspected illegal activities. The Tenant has criminal charges against her. MM has received concerned calls from neighbours. For safety and security reasons, the Tenant must vacate immediately.

AH gave the following testimony and evidence:

- The Landlords have submitted a rent ledger which shows that the Tenant has been consistently late with payment of rent.
- The tenancy agreement states no smoking and no pets, which the Tenant has breached. AH was present at the rental unit on June 26 and 27, 2024 to take pictures and speak with police.
- The Tenant was given a 30 day notice about six months ago. AH spoke with the Tenant about making changes, then cancelled that notice. However, the issues have since gotten worse.
- AH and the Tenant had conversations about the water bill. The Tenant said she thought it was included in the rent. The Tenant would have received a copy of the bill. MM emailed the bill to AH on June 27, 2024.

CB gave the following testimony and evidence:

- CB is a neighbour who owns and resides in a detached home behind the rental unit. CB provided a witness statement regarding the behaviours of the Tenant and other occupants of the rental unit since January 2024. There were frequent visitors coming and going from the property, disturbances, fighting, drug use, and trafficking. The Tenant pleaded guilty to drug-related criminal charges on June 25, 2024. On June 26, 2024, the police raided the rental unit, breaking the front and back doors. The Tenant and others from the property were arrested and released, pending further charges.

The Tenant gave the following testimony:

- Due to e-transfer limitations, every month the Tenant sends an e-transfer of \$2,500.00 on the first and \$1,000.00 the next day. The Tenant does not consider that to be late. The Tenant was late a couple of times and did not pay until the 4<sup>th</sup>, but the Tenant had let AH know ahead of time.
- The Tenant is allergic to cigarette smoke. No one smokes inside the rental unit. CB and his wife didn't want smoke in the backyard. They also complained about

the Tenant's renters doing yoga in the backyard or playing music in the afternoon.

- The Tenant installed security cameras by putting in two little holes in the stucco, which would take three minutes to repair.
- The Tenant did not receive any written notice about anything, only a verbal warning about rent one time.
- The Tenant has text message correspondence with AH, who allowed the Tenant to sublet and told the Tenant to hide her cats from the owner.
- The police were at the rental unit on June 26, 2024 for a specific individual. None of the renters have criminal records. The investigation affected the residents, who had their vehicles and phones taken away.
- The Tenant does not know if the amount requested for the water bill was 70% or the whole bill. The Tenant would like a copy of the bill and to know where the amount comes from.
- The Tenant has not paid rent for July or August 2024. The Tenant did not know that she was supposed to pay rent pending the dispute resolution. The Tenant had not been able to work. The Tenant could talk to the renters and come up with the rent in 3 or 4 weeks. Two renters upstairs moved out due to the eviction notices.

AH and MM did not agree to give the Tenant 3 to 4 weeks to pay the overdue rent.

## **Analysis**

### **Should the One Month Notice and 10 Day Notice be cancelled?**

For the reasons given below, I find this tenancy should be ended on the basis of unpaid rent pursuant to the 10 Day Notice. Therefore, I do not find it is necessary to also determine whether the One Month Notice should be cancelled or upheld.

Section 26(1) of the Act states that a tenant must pay rent when it is due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

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 form

Based on the parties' evidence, I find the 10 Day Notice to comply with the requirements of section 52 of the Act in form and content. I note I do not find the amount for the water bill to have been properly included on the 10 Day Notice as unpaid rent (see section regarding unpaid rent below). However, I do not find the inclusion of the amount owing for the water bill to invalidate the 10 Day Notice in terms of form and content.

I find the Tenant received the 10 Day Notice on July 3, 2024. I find the Tenant did not pay the overdue rent stated to be owing on the 10 Day Notice within 5 days of receiving the notice, in order to cancel it under section 46(4) of the Act.

I find the Tenant made an application to dispute the 10 Day Notice on July 5, 2024, within the time limit under section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Although the Tenant has disputed the 10 Day Notice, I find the Tenant acknowledges that she did not pay any rent for July 2024 as stated on the notice. I find the Tenant indicated that the rent was not paid because of the parties' pending dispute resolution proceeding.

The legal reasons under the Act for a tenant to deduct from rent include:

- The tenant paid too much for a security or pet damage deposit (section 19(2))
- The tenant paid for emergency repairs (section 33(7))
- The tenant paid an illegal rent increase (section 43(5))
- The tenant applied compensation to the last month's rent where the landlord has issued a notice to end tenancy for landlord's use (section 51(1.1))
- The tenant was awarded monetary compensation or a rent reduction by the Residential Tenancy Branch (section 72(2)(a))

I do not find the Tenant to have withheld rent for any of the permitted reasons described above.

I conclude the Landlords have established the grounds for ending this tenancy under the 10 Day Notice. Accordingly, I dismiss the Tenant's claim to cancel the 10 Day Notice without leave to re-apply.

The Tenant's claim to cancel the One Month Notice is dismissed without leave to re-apply as it is moot.

### **Are the Landlords entitled to an Order of Possession?**

Section 55(1) of the Act states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- the landlord's notice to end tenancy complies with section 52 of the Act in form and content; and
- during the dispute resolution proceeding, the director dismisses the tenant's application or upholds the landlord's notice.

Having found the 10 Day Notice to comply with requirements of section 52 of the Act and having dismissed the Tenant's claim to cancel the 10 Day Notice, I find the Landlords are entitled to an Order of Possession under section 55(1) of the Act.

The effective date of the 10 Day Notice has already passed. Pursuant to section 68(2)(a) of the Act and in accordance with Residential Tenancy Policy Guideline 54, I grant an Order of Possession to the Landlords effective seven (7) days after service of the Order upon the Tenant.

### **Are the Landlords entitled to compensation for unpaid rent?**

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed. This provision allows a landlord to obtain a monetary order for unpaid rent without having to file their own application.

According to Residential Tenancy Policy Guideline 3, if the director is satisfied upon reviewing submitted materials and hearing evidence as to an amount of unpaid rent owing, including rent owing since the time the notice to end tenancy was issued, the director must grant an order to the landlord for the amount of unpaid rent found to be owing.

I am satisfied that as of the date of this hearing, or August 1, 2024, the Tenant owes unpaid rent of  $\$3,500.00 \times 2 \text{ months} = \$7,000.00$ . I note that there is no pro-rating for August 2024 rent, because under the parties' tenancy agreement, rent is due on a monthly basis and in full on the first day of each month. Pursuant to section 55(1.1) of the Act, I order the Tenant to pay the Landlords \$7,000.00 for unpaid July and August 2024 rent.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlords to retain the \$1,750.00 security deposit held by them in partial satisfaction of the unpaid rent found to be owing.

Under section 46(6) of the Act, if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the

tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give a 10 day notice to end the tenancy.

In this case, I do not find the Landlords to have provided sufficient evidence to show that they had given the Tenant a written demand for a water bill which has remained unpaid for more than 30 days. I find the 10 Day Notice indicates that the written demand was given on July 1, 2024. Therefore, I do not find that the Landlords can treat any unpaid water bill as unpaid rent under section 46(6) of the Act, and I do not make any order for payment under section 55(1.1) of the Act at this time. I note that I have not made any findings on the merits as to whether the parties' tenancy agreement requires the Tenant to pay for water charges.

The Tenant requested a copy of the water bill during the hearing, which AH agreed to provide. The parties are at liberty to discuss this issue between themselves. If the parties are unable to come to an agreement, the Landlords are at liberty to make a separate application for dispute resolution to address the issue of the water bill.

## Conclusion

The Tenant's applications are dismissed in their entirety without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlords effective **seven (7) days** after service upon the Tenant. The Tenant must be served with this Order as soon as possible. Should the Tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

The Landlords are entitled to compensation of \$7,000.00 for unpaid July and August 2024 rent. The Landlords are authorized to retain the security deposit in partial satisfaction of this amount.

Pursuant to section 55(1.1) of the Act, I grant the Landlord a Monetary Order of **\$5,250.00** for the balance, calculated as follows:

Item	Amount
Unpaid July and August 2024 Rent (\$3,000.00 × 2 months)	\$7,000.00
Less Security Deposit	- \$1,750.00
<b>Total Monetary Order for Landlords</b>	<b>\$5,250.00</b>

This Order may be served on the Tenant, filed in the Small Claims Division of the Provincial Court of British Columbia, 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: August 1, 2024

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Residential Tenancy Branch