

DECISION

Introduction

This hearing dealt with the Tenant's 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
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This 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 One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act
- a Monetary Order for compensation for unpaid rent and/or utilities under section 67 of the Act
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Preliminary Matters

Tenant's Application

The Tenant did not provide any evidence to confirm that they served the Landlord with the Proceeding Package. The Tenant did not attend the hearing to provide any information with regards to service.

Rule of Procedure 3.5 states:

During the hearing or conference, the applicant must be prepared to demonstrate to the satisfaction of the director that each respondent was served with the

Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure. If the applicant cannot demonstrate that each respondent was served as required by the Act and the Rules of Procedure, the director may adjourn the application or dismiss it with or without leave to reapply.

In consideration of Rule of Procedure 3.5 and the fact that the Tenant did not provide any proof of service or attend the hearing, I find that the Tenant's application is dismissed, without leave to reapply.

Landlord's Application

At the onset of the hearing the Landlord advised that the Tenancy had ended, and the Tenant had moved out on September 6th or 7th, 2024. As the Tenancy has ended, I find that the Landlord's application regarding the following issues is moot and therefore, dismissed without leave to reapply:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

I find that the Tenant is deemed served with the Proceeding Package and Evidence, in accordance with section 90 of the Act, on August 24, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

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

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

Background and Evidence

The Tenancy began on September 1, 2023, with a security deposit in the amount of \$900.00 paid at the onset of the tenancy. The monthly rent was \$1800.00 at the end of tenancy.

On July 21, 2024, the Landlord served the Tenant with a Notice to End Tenancy, on July 30, 2024, a One Month Notice to End Tenancy for Cause was served to the Tenant.

On August 14, 2024, the Landlord applied for dispute resolution claiming the following:

- Compensation for unpaid rent for the months of July and August 2024
- Compensation for strata fees and bylaw violations in the amount of \$600.00

The Landlord submits that the tenant moved out either September 6th or 7th, 2024, that the Tenant notified the Landlord after moving out, and that the keys were received in the mail on September 17, 2024.

The Landlord advised that a move out inspection did not occur.

During the hearing the Landlord sought to include unpaid rent for September 2024, increasing the claim for unpaid rent to \$5400.00. The Landlord submitted copies of rent cheques up to June 2024 as well as a copy of a Notice to End Tenancy and emails to the Tenant requesting that rent be paid.

In regard to the strata fees and bylaw violations the Landlord submitted the following:

- a letter dated September 25, 2023, from the strata stating “It has been reported that your tenant’s vehicle is leaking oil. This needs to be cleaned up and rectified prior to moving to stall #44”, the letter further states that they were providing two weeks for the clean up to occur and failure to do so would result in a fine being charged.
- a letter dated November 7, 2023, indicating that the tenant continued to park in the incorrect parking stall and that failure to vacate that stall could result in the vehicle being towed or a fine being assessed against the rental unit.
- A copy of a bylaw fine statement dated June 14, 2024, amounting to \$600.00 for parking in an unassigned stall as well as “vehicle dripping oil”.

Analysis

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Under section 67 of the Act, 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 tenant 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 landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord is claiming \$600.00 for Strata fines levied against her unit due to the Tenant parking in a stall not assigned to the rental unit, as well as for damages to the parking lot surface as a result of the Tenant's car leaking oil.

The building Strata provided the Landlord with a period to correct the issues to avoid a fine. The Landlord did not provide any proof that she notified the Tenant of the violations and required remedy. Therefore, I find that the Landlord failed to prove that she took steps to mitigate or minimize the loss or damage being claimed.

The Landlord's claim for compensation in relation to the Strata bylaw fines is dismissed, without leave to reapply.

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

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.

At the onset of the hearing the Landlord requested to increase her claim to include rent for September 2024, which was incurred while waiting for the matter to be heard.

Rule of Procedure 7.12, Amending an application at the hearing states:

An application can be amended at the hearing only 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, or*
- *where the applicant requests an amendment to their application and the respondent consents to the amendment.*

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Therefore, in accordance with rule 7.12, I grant the Landlord's request to include the rent for September 2024.

I find that the Landlord has sufficiently establish that rent remains unpaid for the months of July 2024, August 2024, and September 2024. The Landlord's request for a Monetary Order for unpaid rent, in the amount of \$5400.00, is granted under sections 26 and 67 of the Act.

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 the Landlord a Monetary Order in the amount of **\$4600.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$5400.00
authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act	-\$900.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$4600.00

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 and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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 15, 2024

Residential Tenancy Branch