

## **DECISION**

### **Introduction**

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
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

and the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenant(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

### **Service of Evidence**

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

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## **Issues to be Decided**

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

Is the Tenant entitled to an order for the Landlord to make repairs to the rental unit?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

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

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## **Facts and Analysis**

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

Both parties agree that the current monthly rent is \$3256.00 and is due on the first day of each month. Both parties also agree that there is a security deposit of \$1400.00.

The Tenant affirms never being served the One Month Notice. The Landlord provided copies of registered mail receipts showing, along with the provided tracking number, that the Notice was sent to the Tenant on July 23, 2024, and returned to the Landlord August 15, 2024, after delivery was attempted and the Notice sat for pick up.

Policy Guideline 12 states, "where a record is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing."

Although the Tenant affirms having issues with mail delivery at his rental unit, the fact that he acknowledges receipt of the Proceeding Package at the same address indicates that mail is successfully delivered. I deem that the One Month Notice was served to the Tenant on July 28, 2024.

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

Both parties provided a copy of the One Month Notice. It is signed July 22, 2024, with a move out date of August 31, 2024. The reason check for service is that the Tenant is repeatedly late paying rent. The *Details of the Event(s)* section states the Tenant is repeatedly late paying rent and, in 2024, was late paying rent for the months of January, March, May, June and July.

The Tenant confirms being late paying rent for the months in question. He further affirms being late with about a third of his rent payments on a regular basis since the start of the tenancy but that it has never been a problem before.

The Landlord provided copies of four different caution notices, one dated January 17, 2024, one dated March 13, 2023, one dated for May 14, 2025, and one dated June 27, 2024, all advising the Tenant that rent must be paid in full on the first day of the month.

The Tenant denies ever receiving these, but Landlord D.C. affirms all four caution notices were posted on the Tenant's door, and Landlord D.G. affirms personally posting the May and June notices on the Tenant's door.

I prefer the Landlord's evidence and find it most likely that the four caution notices were, most likely, posted on the Tenant's door.

Both parties further agree that the Tenant has not paid rent for October 2024.

Furthermore, the Tenant did not apply for dispute resolution until September 19, 2024, well past the 10 day deadline of August 7, 2024, established by the deemed date of service of the One Month Notice, and the Tenant did not provide any evidence of exceptional circumstance as defined by section 66 of the Act. Furthermore, section 66 of the Act specifically does not allow the extension of the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice, in this case August 31, 2024.

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.

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.

Additionally, section 55(2) allows the Landlord to seek an Order of Possession directly if

- (a) a notice to end the tenancy has been given by the tenant or
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

I find the Landlord has provided sufficient evidence that the Tenant has repeatedly, and habitually, paid rent late. Therefore, I find that the Landlord is entitled to an Order of Possession.

**Is the Tenant entitled to an order for the Landlord to make repairs to the rental unit?**

As the One Month Notice was not cancelled and the landlord is being given an Order of Possession, this issue was not adjudicated and is dismissed, without leave to reapply.

**Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?**

As the One Month Notice was not cancelled and the landlord is being given an Order of Possession, this issue was not adjudicated and is dismissed, without leave to reapply.

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

As the Tenant was not successful in this application, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

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

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 seven (7) 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 **\$100.00** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
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>\$100.00</b>

The Landlord may retain \$100.00 from the tenant's security deposit as full satisfaction of the monetary order.

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 9, 2024

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Residential Tenancy Branch