

DECISION

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant applied for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 66 of the Act

The Landlord applied for:

- an Order of Possession based on the 10 Day Notice under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Tenant J.B. attended the hearing for the Tenant.

Landlord K.L.Y., S.C. and R.C. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Both parties acknowledged receipt of the Proceeding Package and raised no concerns regarding service. I find the Proceeding Package duly served in accordance with the Act, and the hearing proceeded as scheduled.

Service of Evidence

No evidence was received by the Residential Tenancy Branch from the Tenant. The Tenant confirmed that he did not submit any evidence for consideration.

The Tenant acknowledged receipt of the Landlord's documentary evidence and raised no concerns regarding service. I find the Landlord's documentary evidence before me duly served on the Tenant in accordance with the Act and accepted it for consideration.

Preliminary Matters

Claim Increase

At the outset of the hearing, the Landlord sought to increase her monetary claim from \$1,200.00 to \$3,200.00 to reflect the total amount of rent arrears.

Residential Tenancy Branch Rules of Procedure, Rule 7.12, 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 be cancelled? If not, is the Landlord entitled to an Order of Possession

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

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

Background and Evidence

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 that the tenancy began on July 16, 2024, with a monthly rent of \$2,000.00, due on 1st day of each month, with a security deposit in the amount of \$1,000.00, currently being held by the Landlord.

Both parties agreed that the Landlord served and the Tenant received the 10 Day Notice on September 28, 2024. In it, it indicates that the Tenant failed to pay \$1,200.00 in rent on September 1, 2024 and identifies October 8, 2024 as its effective date.

R.C. testified that the Tenant made a partial payment of \$800.00 on September 18, 2024 for the rent of September 2024.

Both parties confirmed that rent for October 2024 remains outstanding, and that the total amount owing is \$3,200.00. The Tenant is currently residing at the rental unit.

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).

The 10 Day Notice was served to the Tenant on September 28, 2024. I find that the Tenant had until October 3, 2024 to dispute the 10 Day Notice or to pay the full amount of the arrears.

The Tenant acknowledged that he continued to owe the outstanding arrears of September rent and has not paid the rent for October.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has shown sufficient grounds to validate the 10 Day Notice and obtain an end to this tenancy.

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.

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.

Given that rent has not been paid in full since September 2024, I grant the Landlord an order of possession effective within 7 days of receipt by the Tenant.

Is the Landlord entitled to a Monetary Order for 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.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent in the amount of \$3,200.00.

The Landlord continues to hold the Tenant's security deposit of \$1,000.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain the Tenant's security deposit in partial satisfaction of the monetary orders.

I further order the Landlord to retain the interest accrued on the security deposit, which is \$7.82 as of the date of this Decision.

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

As the Landlord was successful in this 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**. Should the Tenant 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 **\$2,292.18** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 55 of the Act	\$3,200.00
Security Deposit plus interest	-\$1,007.82
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$2,292.18

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced in the Small Claims Court of British Columbia 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.

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.

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 29, 2024

Residential Tenancy Branch