

## **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) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act

and 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 under section 67 of the Act

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

I find that the Landlord was not served with the Proceeding Package in accordance with the Act. The Tenant confirms not serving the Landlord.

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 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?

## **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 Tenant's monthly rent is \$809.00. The tenancy agreement provided by the Landlord indicates rent is due on the first day of each month.

The Landlord provided a copy of the 10 Day Notice. It is signed January 14, 2025, with a move out date of January 29, 2025. It requests \$2427.00 of unpaid rent that was due on January 1, 2025.

Checking the Landlord provided tracking number indicates the Tenant picked up the 10 Day Notice on February 3, 2025. Although a notice card was left at the Tenant's rental unit on January 16, 2025, the Tenant affirms not finding said notice card until January 31, 2025, when he returned home from a hospital stay.

Policy Guideline 12 states

Deeming provisions should not be relied on to calculate time to respond to service of a record. The date a person receives records is what is used to calculate time.... For example, s. 47 allows a landlord to end a tenancy by giving notice to the tenant. S. 47 (4) states that a tenant may dispute the notice by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Therefore, a tenant must file their application for dispute resolution within 10 days of receipt of the notice

I find that the 10 Day Notice was duly served to the Tenant on February 3, 2025, and that the Tenant had until February 10, 2025, to dispute the 10 Day Notice or to pay the full amount of the arrears.

I further find, under section 53 of the Act, the effective date of the 10 Day Notice automatically changed to February 20, 2025.

## **Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?**

Both parties agree that the Tenant has not paid rent for the period of October 2024, to February 2025, inclusively, and that the entirety of this rent remains unpaid.

The Tenant affirms not paying rent because of illness and financial distress. The Tenant provided no other reason for withholding rent.

Withholding rent for the reasons given by the Tenant, is not allowed under the Act. Therefore, 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.

Furthermore, as the rent requested in the 10 Day Notice remains unpaid, I find that the landlord is entitled to an Order of Possession based on the 10 Day Notice under sections 46 and 55 of the Act.

### **Is the landlord entitled to a Monetary Order for unpaid rent?**

I find that the landlord has established a claim for the unpaid rent for October 2024, to February 2025.

However, I note that the Landlord's Notice of Dispute Resolution Proceeding states, "Three month's rent, November & December 2024 and January 2025." Additionally, the 10 Day Notice only requests \$2427.00 of unpaid rent, an amount equal to three months' rent

For the above reasons, I find the Landlord is entitled to a monetary order for unpaid rent for November 2024 to January 2025, inclusive, but not entitled to compensation for October 2024 rent.

Rule 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. As both parties agree the Tenant has not paid rent for February 2025, I find the Landlord is entitled to a monetary order for February 2025.

Therefore, I find the landlord is entitled to a \$3236.00 Monetary Order for unpaid rent under section 55 and 72 of the Act.

### **Conclusion**

I grant an Order of Possession to the Landlord **effective at 1:00 PM on March 15, 2025, 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 **\$3236.00** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
a Monetary Order for unpaid rent under sections 55 and 72 of the Act	\$3236.00
<b>Total Amount</b>	<b>\$3236.00</b>

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 27, 2025

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Residential Tenancy Branch