Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BONNIEHON ENTERPRISES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR-DR, MNDCL, FFL

Introduction

On July 26, 2021 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for money owed or compensation for damage of loss, and to recover the fee for filing an Application for Dispute Resolution.

A Residential Tenancy Branch Adjudicator considered the Application for Dispute Resolution filed on July 26, 2021 and concluded that the matter must be considered at a participatory hearing, as the Tenant had filed an Application for Dispute Resolution disputing that Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. This is outlined in that Adjudicator's interim decision of August 31, 2021.

On August 03, 2021 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for more time to apply to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the Landlord to make repairs, for an Order requiring the Landlord to provide services or facilities, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and to recover the fee for filing the Application for Dispute Resolution.

On October 10, 2021 the Tenant filed a second Application for Dispute Resolution, in which the Tenant applied to cancel a second Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the Landlord to make repairs, for an Order requiring the Landlord to provide services or facilities, for an Order requiring the Landlord to comply with the *Act* and/or the tenancy agreement, for a monetary Order for

money owed or compensation for damage or loss, for compensation for emergency repairs, for a rent reduction, for an Order suspending or setting conditions on the Landlord's right to enter the rental unit, and to recover the fee for filing the Application for Dispute Resolution.

All three of the aforementioned Applications for Dispute Resolution were the subject of dispute resolution hearings on December 03, 2021 and December 09, 2021. On December 09, 2021 the Residential Tenancy Branch Arbitrator granted the Landlord a monetary Order and an Order of Possession.

The Tenant filed an Application for Review of the three aforementioned Applications for Dispute Resolution. On December 20, 2021 a Residential Tenancy Branch Arbitrator suspended the decision of December 09, 2021 and Ordered that a new hearing be convened.

A hearing was convened on March 29, 2021 to consider the merits of the Applications for Dispute Resolution. For reasons outlined in my decision of March 29, 2021, the hearing on March 29, 2021 was adjourned.

The hearing was reconvened on April 07, 2022 and was concluded on that date.

The Agent for the Landlord stated that on August 22, 2021 the Landlord's Dispute Resolution package which was filed on July 26, 2021 and evidence the Landlord submitted to the Residential Tenancy Branch on July 26, 2021 were served to the Tenant by registered mail. In a Proof of Service filed with the Residential Tenancy Branch on August 12, 2021, the Agent for the Landlord declared that these documents were served by registered mail on August 12, 2021. The Landlord submitted Canada Post documentation that indicates registered mail was sent to the Tenant on August 12, 2021.

On the basis of the Proof of Service that was submitted to the Residential Tenancy Branch in August 12, 2021 and the Canada Post documentation, I find that the Landlord's Dispute Resolution Package was sent to the Tenant, by registered mail, on August 12, 2021. I find this evidence is more reliable than the testimony provided by the Agent for the Landlord at the hearing on April 07, 2022, given the passage of time. I do not find that the Agent for the Landlord intentionally intended to mislead the proceedings by providing an incorrect date. Rather, I find likely that she simply inadvertently provided an incorrect date given that the documents were mailed

approximately 8 months ago. I also find it possible she was referring to the date that package was delivered by Canada Post, which was August 22, 2021.

The Tenant stated that she did not receive the package mailed by the Landlord on August 12, 2021. She stated that she is aware that it was "delivered" but she also knows it was returned to the sender. She was not able to explain how she knew it was returned to the sender.

I have checked the Canada Post website, using the tracking number on the Canada Post documentation for the registered mail sent on August 12, 2021. The website shows that the package was delivered, and signed for, on August 22, 2021.

I find that the Agent for the Landlord's testimony regarding service is more reliable than the Tenant's testimony that she did not receive the documents mailed to her on August 12, 2021, as the Agent for the Landlord's testimony is strongly supported by Canada Post documentation and the Canada Post website. Conversely, there is absolutely no evidence to support the Tenant's testimony that the package was returned to the sender. I therefore find that the Tenant received the documents mailed on August 12, 2021 and I find it appropriate to consider the Landlord's Application for Dispute Resolution.

As I have concluded that the Tenant received the package sent on August 12, 2021, I find that she also received the evidence sent by the Landlord in that package. I therefore accepted that package as evidence for these proceedings. I should note, however, that the documentary evidence served on August 12, 2021 not particularly relevant to any issue in dispute at the proceedings, and I would have reached the same conclusions here today even if that evidence was not available to me.

The Tenant stated that on August 17, 2022 the Tenant's Application for Dispute Resolution which was filed on August 03, 2021 was served to the Landlord by email. The Agent for the Landlord acknowledged receipt of these documents and I find it appropriate to consider this Application for Dispute Resolution.

The Tenant stated that the Tenant's Application for Dispute Resolution which was filed on October 10, 2021 was served to the Agent for the Landlord by email, although she cannot recall the date of service. The Tenant stated that she does not know if she served any evidence to support her testimony that these documents were served by email.

The Agent for the Landlord stated that the Tenant's second Application for Dispute Resolution was not received by the Landlord. She stated that she is now aware of the issues in dispute in that Application for Dispute Resolution and she is willing to proceed with those matters at these proceedings. As the Agent for the Landlord declared that she was willing to proceed with the issues outlined in the Tenant's second Application for Dispute Resolution, I find it reasonable to consider the Application for Dispute Resolution that was filed on October 10, 2021.

In July of 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via courier, although she cannot recall the date of service. The Tenant stated that she is not sure if she submitted proof of service of these documents.

The Agent for the Landlord stated that the Landlord did not receive any evidence from the Tenant via courier. As the Tenant has submitted insufficient evidence to show that she sent evidence to the Landlord by courier and the Agent for the Landlord denies receipt of that evidence, I find that the Tenant has failed to meet the burden of proving her evidence was served pursuant to section 88 of the *Residential Tenancy Act (Act).* As such, this evidence was not accepted as evidence for these proceedings.

On October 10, 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via email, although she cannot recall the date of service. The Tenant stated that she is not sure if she submitted proof of service of these documents. The Agent for the Landlord stated that this evidence was not received by the Landlord.

In the absence of evidence to corroborate the Tenant's testimony that she sent her October 10, 2021 evidence by email or that refutes the Landlord's testimony that it was not received, I find that the Tenant has failed to meet the burden of proving her evidence was served pursuant to section 88 of the *Act.* As such, this evidence was not accepted as evidence for these proceedings.

On March 07, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via email, on March 08, 2022. The Landlord submitted evidence to show that documents were sent to the Tenant by email on March 08, 2022.

As the Tenant sent hearing documents to the Landlord, via email, I find it reasonable to conclude that the Tenant had provided that email address to the Landlord as a service address for these proceedings. I therefore find that the Landlord's hearing package was properly served to the Tenant on March 08, 2022, pursuant to section 89(1)(f) of the *Act*.

The Tenant stated that she did not receive this evidence because in January of 2022 she "blocked" the Landlord from using her email address. The Agent for the Landlord stated that the Tenant did not respond to the email sent on March 08, 2022. The Landlord submitted no evidence to show that the Tenant received the evidence that was emailed on March 08, 2022.

As I am unable to conclude that the Tenant received the Landlord's evidence sent on March 08, 2022, it was not accepted as evidence for these proceedings. Although not requested by the Landlord, I considered adjourning the proceedings to provide the Landlord with the opportunity to re-serve the evidence. I did not do so, in large part, because I was able to reach a decision based on the information provided by the parties at the hearing. I also did not do so, in part, because the Landlord did not wish to have the hearing adjourned.

The Family Services Worker stated that in December of 2021 she served the Landlord with documents that were filed with the Application for Review Consideration. The Agent for the Landlord acknowledged receipt of those documents and they were accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were permitted to refer to documents submitted in evidence, even though those documents were not accepted as evidence for these proceedings.

Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter #1

On February 17, 2022 the Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession on the basis of a One Month Notice to End Tenancy for Cause.

The Residential Tenancy Branch joined this Application for Dispute Resolution with the aforementioned three Applications for Dispute Resolution. As the Application for Dispute Resolution filed on February 17, 2022 is not sufficiently related to the aforementioned three Applications for Dispute Resolution, it should not have been joined.

After the hearing on March 29, 2022, the Residential Tenancy Branch removed this Application for Dispute Resolution filed on February 17, 2022 from these proceedings. Although the file number for the fourth Application for Dispute Resolution appears on my interim decision, it does not appear on this final decision, as it is no longer joined with these Applications for Dispute Resolution.

Preliminary Matter #2

The Tenant asked that the hearing on April 08, 2022 be adjourned, in part, because her child contracted COVID seven days ago and is very ill.

The Tenant asked that the hearing on April 08, 2022 be adjourned, in part, because she has been unable to sleep properly due to her child's illness and she is mentally unprepared to participate in the proceedings.

The Tenant stated that she has not submitted recent evidence from a physician that indicates she is unable to participate in the hearing on April 08, 2022.

The Tenant stated that she knows that that in my interim decision of March 29, 2022 she was directed to appoint a third party, such as the Family Services Worker, to represent her at the next hearing in case she is unable to attend the hearing for medical reasons. She stated that she was unable to find someone to represent her at these proceedings. She stated that although the Family Services Worker is her advocate, that person is not able to assist her with legal matters.

The Tenant stated that she recently determined that she should seek legal counsel, due to the intricacies of the issues in dispute at these proceedings.

The Agent for the Landlord strongly objected to an adjournment. She stated that the Tenant has not paid rent for many months, the Tenant continues to live in the unit without paying rent, and these proceedings have already been delayed by many months.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedures authorizes me to determine whether an adjournment is warranted. After considering the submissions of both parties, I denied the April 07, 2022 request for an adjournment.

This request for an adjournment was denied, in part, because no submissions were presented that would cause me to conclude that an adjournment would result in a resolution prior to a reconvened hearing.

This request for an adjournment was denied, in part, because I was not satisfied that it was necessary to provide the Tenant with a fair opportunity to be heard. Although the Tenant submits that her child is very ill, no recent medical evidence was submitted to corroborate that submission. I note that the Tenant's child was with her during the hearing and although the child made a small amount of noise during the hearing, she was given time to respond to the child's needs and I am satisfied that the Tenant was able to fairly participate in the hearing.

Although the Tenant declared that she has been unable to sleep properly due to her child's illness and she is mentally unprepared to participate in the proceedings, no recent medical evidence was submitted to corroborate this testimony. I found that the Tenant was able to articulate her submissions reasonably well and that she was able to respond appropriately to the issues in dispute.

Although the Tenant submitted medical evidence to support her application for an adjournment on March 31, 2022, no additional medical evidence was submitted to convince me that she was not able to participate in these proceedings. I am not satisfied that the information in that evidence warrants a second adjournment.

The Tenant's submission that she recently determined that she should seek legal counsel due to the intricacies of the issues in dispute at these proceedings is not, in my view, sufficient grounds for granting an adjournment. The issues in dispute at these

proceedings have been known to the Tenant for at least 6 months, which granted her ample time to seek legal counsel.

This request for an adjournment was denied, in part, because the Landlord strongly objected to an adjournment. I find that these proceedings have been delayed for many months, during which time the Tenant has been living in the unit without paying rent. I find that a further delay would be highly prejudicial to the Landlord, who would potentially continue to suffer economic losses.

Preliminary Matter #3

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. The parties have identified several issues on the Applications for Dispute Resolution, which are not sufficiently related to be determined during these proceedings.

The most urgent issue in dispute in these Applications for Dispute Resolution is the continued possession of the rental unit and I will, therefore, only consider issues related to that matter, which include:

- the Landlord's application for an Order of Possession;
- the Tenant's applications to cancel two Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- the Landlord's application for a monetary Order for unpaid rent;
- whether the Tenant had the right to withhold rent because of emergency repairs; and
- the filing fees paid by both parties.

Any other issues outlined in the Tenant's Applications for Dispute Resolution are dismissed, with leave to re-apply, as they are not sufficiently related to continued possession of the rental unit. The Landlord's claim for unpaid parking fees is also dismissed, with leave to reapply, as that is not sufficiently related to continued possession of the rental unit.

Preliminary Matter #4

At the hearing on April 07, 2021 the Agent for the Landlord applied to amend the Landlord's Application for Dispute Resolution to include a claim for all rent that is currently due.

I find it was reasonable for the Tenant to conclude that the Landlord would be seeking to recover all rent that is currently due, including unpaid rent that has accrued since the Landlord's Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 08, 2021 be set aside?
Should the Tenant be granted more time to apply to cancel the July 08, 2021 Ten Day Notice to End Tenancy for Unpaid Rent or Utilities?
Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 02, 2021 be set aside?
Is the Landlord is entitled to an Order of Possession and/or to a monetary Order for unpaid rent*?*
Did the Tenant have the right to withhold rent as a result of emergency repairs?

Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- the tenancy began on April 02, 2021;
- the Tenant agreed to pay rent of $1,525.00 by the first day of each month;
- on September 30, 2021 the Landlord sent the Tenant an email, in which the Landlord informed the Tenant that the tenancy would be reinstated;
- on July 08, 2021 rent was overdue by 1,337.50;
- by July 22, 2021 rent for July had been paid in full;
- on October 02, 2021 rent was overdue by $4,200.00; and
- no rent has been paid for any period after October 31, 2021.

The Tenant stated that the Landlord informed her that all rent payments needed to be paid by certified cheque or a money Order, either of which had to be delivered to the Landlord's business office which is a considerable distance away from the rental unit. The Tenant stated that on one occasion she paid her rent by e-transfer and that she could have continued to pay her rent by e-transfer but she did not do so because the Agent for the Landlord told her that the only method of paying rent was to deliver payment to the off-site business office.

The Agent for the Landlord stated that after the Tenant tendered an NSF cheque, she told the Tenant that a personal cheque would not be accepted to replace the NSF cheque. She stated that the Tenant was told that if she did not want to send the payment by e-transfer, a bank draft needed to be delivered to the business office off-site. She stated that in more than one email sent after the NSF cheque was received, she told the Tenant her rent could by paid by e-transfer. She stated that she never told the Tenant she could not pay by e-transfer and she was always able to pay be e-transfer.

The Agent for the Landlord stated that the Landlord a $600.00 cheque from a local agency was mailed to the Landlord on, or about, August 06, 2021. She stated that any cheques for subsidized rent were previously delivered directly to the Landlord by the Tenant. She stated that no other subsidized rent cheques were mailed to the Landlord after August 06, 2021.

The Tenant stated that a local support agency sent the Landlord a cheque for rent in August, September, and October, although she does not know the date they were mailed. She stated that each of these cheques was for $600.00. She stated that the August cheque was cashed by the Landlord but the cheques issued in September and October of 2021 were not cashed.

The Agent for the Landlord stated that the Landlord did not cash the $600.00 cheque received from the local support agency on, or about, August 06, 2021 until September 29, 2021. She stated that the Landlord delayed cashing that cheque as they were awaiting a decision from the Residential Tenancy Branch and the Landlord did not want to cash the cheque in the event the Residential Tenancy Branch determined the tenancy was ending on the basis of the Application for Dispute Resolution filed by the Landlord in July of 2021.

The Agent for the Landlord stated that the Tenant did not offer a rent payment for September of 2021 or for any month thereafter.

The Tenant stated that in September of 2021 and for several months thereafter, she sent the Agent for the Landlord an email in which she declared she was prepared to pay the rent and she asked how rent should be paid. She stated that she does not know if she submitted these emails as evidence, but she read out emails she says were sent on

September 02, 2021 and October 03, 2021. She stated that she sent these emails to establish that she was trying to pay rent.

The Landlord stated that she did not receive the emails the Tenant allegedly sent in which she offered to pay rent and asked for directions on payment methods.

The Family Support Worker stated that she has no knowledge of rent cheques provided to the Landlord in August, September, or October of 2021. She stated that she communicated with the Agent for the Landlord on December 16, 2021 and advised the Agent for the Landlord that her agency was willing to pay all of the rent due on December 16, 2021 plus some rent that was coming due. She stated that this offer was contingent on the Landlord agreeing to continue the tenancy. She stated that the Landlord would not agree to continue the tenancy and, as such, no rent was paid to the Landlord after December 16, 2021.

The Agent for the Landlord agrees that she declined the payments offered by the Family Support Worker in December of 2021, as the Landlord did not wish to continue the tenancy.

The Tenant stated that because the Landlord refused to accept the payments offered by the agency that was supporting her, she lost her funding and has been left in a “very vulnerable position. The Family Support Worker stated that the Tenant could apply for more funding through her agency but it would be contingent on her having a one year lease for a rental unit.

The Agent for the Landlord stated that on July 08, 2021 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the front door of the rental unit, which declared that the rental unit must be vacated by July 21, 2021. The Tenant stated that this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was received shortly after it was posted on her door.

The Agent for the Landlord stated that on October 02, 2021 a second Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 02, 2021, was posted on the door of the rental unit, which declared that the rental unit must be vacated by October 15, 2021. The Tenant stated that she received this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities a few days after it was posted.

When asked if she had authority from the Residential Tenancy Branch to withhold rent, the Tenant replied that she did not.

When asked if she had authority to withhold rent because she had made emergency repairs, the Tenant advised that she paid to repair a closet door that fell.

The Agent for the Landlord and the Tenant agree that the Landlord offered to reimburse the Tenant for the cost of repairing the door if the Tenant provided the Landlord with a receipt for the repair. The Tenant stated that she provided the Landlord with a receipt for the repair on July 12, 2021 and she does not know if she has proof that the receipt was provided to the Landlord.

The Agent for the Landlord stated that the Landlord has not yet paid to repair the door as the Tenant has not provided a receipt for the repair.

Analysis

On the basis of the undisputed evidence, I find that rent of $1,525.00 was due by the first day of each month.

On the basis of the undisputed evidence, I find that on July 08, 2021 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the front door of the rental unit, which declared that the rental unit must be vacated by July 21, 2021.

On the basis of the undisputed evidence, I find that on September 30, 2021 the Landlord sent the Tenant an email, in which the Landlord informed the Tenant that the Landlord would allow the tenancy to continue.

Residential Tenancy Branch Policy Guideline #11, with which I concur reads, in part:

Express waiver happens when a landlord and tenant explicitly agree to waive a right or claim. With express waiver, the intent of the parties is clear and unequivocal. For example, the landlord and tenant agree in writing that the notice is waived and the tenancy will be continued.

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

I find that the email the Landlord sent on September 30, 2021 was an express waiver of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was served on July

08, 2021. I find that the Tenant's decision to remain living in the rental unit is an implied waiver that the Tenant also wished for the tenancy to continue. I therefore find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was served on July 08, 2021 has no force or effect. I therefore dismiss the Landlord's application for an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 08, 2021, and I grant the Tenant's application to cancel it.

As the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was served on July 08, 2021 has been waived by the parties, I find it is unnecessary to for to consider whether the Tenant should be granted more time to apply to cancel this Notice.

On the basis of the undisputed evidence, I find that on October 02, 2021 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the front door of the rental unit, which declared that the rental unit must be vacated by October 15, 2021. As the Tenant is not certain of the date this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was located, I find that this Notice is deemed received on October 05, 2021, pursuant to section 90 of the *Act.*

On the basis of the undisputed evidence, I find that a local support agency sent the Landlord a $600.00 cheque in August and that the Landlord cashed the cheque on September 29, 2021. Although there was a delay in cashing this cheque, the Agent for the Landlord provided a reasonable reason for the delay.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord. On the basis of the undisputed evidence, I find that the Tenant owed $4,200.00 in rent on October 02, 2021.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. As the rent had not been paid in full when it was due on October 01, 2021, I find that the Landlord had the right to serve a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

Even if I accepted the Tenant's testimony that a local support agency sent the Landlord a $600.00 cheque for rent in September and a $600.00 cheque for rent in October which were not cashed, I would still conclude that the Landlord had the right to serve a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. Even if these payments had been made, the Tenant would have still owed $3,000.00 in rent on October 02, 2021.

When a tenant submits that a landlord has prevented a tenant from paying rent, the tenant bears the burden of proving that the landlord prevented the tenant from paying rent. In the case of verbal testimony, when one party submits their version of events and the other party submits a conflicting version of events, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord prevented the Tenant from paying the portion of her rent that was not covered by the local support agency.

In concluding that the Tenant submitted insufficient evidence to establish that the Landlord prevented the Tenant from paying her rent prior October 02, 2021, I find that the Tenant has submitted insufficient evidence to establish that the Tenant was told that she must be paid by delivering a certified cheque or a money order to an off-site business office. As there is no evidence before me, such as an email, to corroborate the Tenant's version of events and the Tenant's version of events is refuted by the Agent for the Landlord, I cannot conclude that the Tenant was only able to pay her rent by certified cheque or money order.

Although the Agent for the Landlord acknowledged that the Tenant was told the Landlord would not accept a second cheque to replace a NSF cheque and that she would need to deliver a certified cheque or a money Order to an off-site business office, she stated that was not the only method of paying the rent available to the Tenant.

I find that the Tenant has submitted insufficient evidence to establish that she was told she could no longer pay her rent by e-transfer. As there is no evidence before me, such as an email, to corroborate her version of events and the Tenant's testimony is refuted by the Agent for the Landlord, I cannot conclude that the Tenant was prevented from paying her rent by e-transfer.

Even if I accepted the Tenant's disputed testimony that she sent the Agent for the Landlord at least two emails in which she asked how rent could be paid, I would not conclude that this served as a legitimate attempt to pay the rent.

As the Tenant acknowledged that she had the ability to pay her rent by e-transfer, I find that she should have done so prior to October 01, 2021, in which case she would have had proof that the payment was accepted. In the event the Landlord was refusing payment by e-transfer, the Tenant would have then had proof of her attempt to pay the rent.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In the circumstances before me, I find the version of events provided by the Tenant is less credible than the version of events provided by the Landlord. As landlords are motivated, by the very nature of their business, to collect rent, I find it highly unlikely that a landlord would accept rent payment by e-transfer, given the simplicity and security of that payment method.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted on the door of the rental unit on October 02, 2021 which declared that rental unit must be vacated by October 15, 2021. I find this serves as proper notice of the Landlord's intent to end the tenancy, pursuant to section 46(1) of the *Act*.

Section 46(4) of the *Act* stipulates that within 5 days of receiving a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, a tenant may pay the overdue rent, in which case the notice has no effect. As the Tenant is deemed to have received this Notice to End Tenancy on October 05, 2021, I find that the Tenant had until October 15, 2021 to pay all of the outstanding rent.

When a tenant submits that a landlord has prevented a tenant from paying rent within 5 days of receiving a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, the

tenant bears the burden of proving that the landlord prevented the tenant from paying rent.

For reasons previously stated, I find that the Tenant could have paid the outstanding rent by e-transfer and I do not accept her submission that she did not pay the rent by October 15, 2021 because the Landlord prevented her from doing so.

Even if I accepted the Tenant's testimony that a local support agency sent the Landlord a $600.00 cheque for rent in September and a $600.00 cheque for rent in October which were not cashed, I would still conclude that the outstanding rent had not been paid, in full, by October 15, 2021. Even if these payments had been made and the Landlord applied the $1,200.00 payments to the rent due, the rent would have still been outstanding by $3,000.00 on October 15, 2021.

As the overdue rent had not been paid, in full, by October 15, 2021, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities remains in full force and effect.

I have considered the letter, dated October 21, 2021, from a local support agency which was accepted as evidence for these proceedings. Although the author of the letter declares that the author attempted to deliver a cheque to the Landlord and then subsequently mailed one, the author does not declare the amount of the cheque. Given the testimony of the parties, I find it reasonable to conclude that the cheque was for $600.00, which is the amount previously provided to the Landlord by this agency.

The author of the letter does not declare when the author attempted to deliver the cheque and then subsequently mailed the cheque. As the letter was written on October 21, 2021 and the author knew the cheque was cancelled "at the end of the month", I find it reasonable to conclude that the author was not referring to a cheque that had been delivered in the month of October. As both parties agree that the cheque provided for August of 2021 was cashed by the Landlord, I find it reasonable to conclude that the author was not referring to the cheque that was provided in August of 2021. By the process of elimination, I find it likely to conclude that the author is referring to a cheque that was provided in September of 2021.

As has been previously stated however, I find that the Landlord would have had grounds to end this tenancy even if the Landlord had received a $600.00 cheque in September, as rent would still have been outstanding before the Ten Day Notice to End

Tenancy for Unpaid Rent or Utilities was served and after the deadline of paying the rent, in full, on October 15, 2021.

I have placed no weight on the undisputed testimony of the Family Support Worker, who stated that on December 16, 2021 she advised the Agent for the Landlord that her agency was willing to pay all of the rent due on that date plus some rent that was coming due. As this offer was contingent on the Landlord agreeing to continue the tenancy and the Landlord clearly did not wish to continue the tenancy, I find that this information is not relevant to the matters before me.

Had the offer of full payment been made within 5 days of the Tenant receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 02, 2021, the Landlord would have been obligated to accept the payment and continue the tenancy. As this offer was made long after that deadline, the Landlord was under no obligation to agree to continue the tenancy.

Section 33 of the *Act* permits a tenant, in certain circumstances. to make emergency repairs and to deduct the cost of those repairs from the rent.

Section 33 of the *Act* defines “emergency repairs” as repairs that are urgent; necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to a rental unit, the electrical systems, or in prescribed circumstances, a rental unit or residential property. As the closet door had already fallen, there was no immediate need to replace it, and replacing a closet door is not one of the items listed in the definition, I cannot conclude that it constitutes an emergency repair.

Even if replacing the closet door was an emergency repair, I find that the Tenant has submitted insufficient evidence to establish that she provided the Landlord with a receipt for the repair. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant’s testimony that she provided the Landlord with a receipt or that refutes the Agent for the Landlord’s testimony that a receipt was not provided.

As such, I find that the Tenant has failed to establish that she is entitled to compensation for making emergency repairs and/or that she had the right to withhold the cost of that repair from rent due.

As the Tenant submitted no evidence to establish she had authority from the Residential Tenancy Branch to withhold rent; the rent was not paid within 5 days of deemed receipt of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 02, 2021; and the Tenant has failed to establish she had the right to withhold rent as a result of emergency repairs, I find that the Landlord has the right to end this tenancy, pursuant to section 46(1) of the *Act.* I therefore must dismiss the application to cancel the Notice to End Tenancy, dated October 02, 2021.

Section 55(1) of the *Act* stipulates 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* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Although a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 02, 2021, which was submitted to the Residential Tenancy Branch by the Tenant was not accepted as evidence for these proceedings, I find it reasonable to consider that document as both parties acknowledge the content of it. On the basis of that acknowledgement, I find that this Notice to End Tenancy complies with section 52 of the *Act*.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 02, 2021 has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act,* I find the Landlord is entitled to an Order of Possession, pursuant to section 55(1) of the *Act.*

On the basis of the undisputed evidence, I find that no rent has been paid for any period after October 31, 2021. As the Tenant occupied the rental unit between November 01, 2021 and March 31, 2022, I find that she is obligated to pay rent for those 5 months, in the amount of $7,625.00. As the Tenant remains in the rental unit, I find that she is obligated to pay per diem rent for the period between April 01, 2021 and April 07, 2022, in the amount of $355.81. ($50.83 X 7)

As it is possible that the Tenant may vacate the rental unit on April 08, 2022, I am unable to award compensation for any period after April 07, 2022. The Landlord retains the right to file

another Application for Dispute Resolution for rent/lost revenue for any period after April 07, 2022.

When the unpaid rent for the period between November 01, 2021 and April 07, 2022 is added to the $4,200.00 that is due for the period prior to October 31, 2021, I find that the Tenant currently owes rent of $12,180.81.

I find that the Landlord's Application for Dispute Resolution has some merit. I find that the Application for Dispute Resolution filed by the Tenant on August 03, 2021 also has some merit. As these costs offset each other, I find that neither party must compensate the other for the cost of filing an Application for Dispute Resolution.

I find that the Tenant has failed to establish that the Application for Dispute Resolution filed on October 10, 2021, 2021 has merit and I therefore dismiss the application to recover the fee for filing that Application for Dispute Resolution.

Conclusion

There is no need to consider the Tenant's application for more time to apply to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 08, 2021, as that Notice to End Tenancy has been waived by the parties.

As the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 08, 2021, has been waived by the parties, the Tenant's application to cancel this Notice to End Tenancy is granted and the Landlord's applicant for an Order of Possession on the basis of this Notice to End Tenancy is dismissed.

The Tenant's application to dismiss the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 02, 2021 is dismissed.

As I have concluded that the Landlord is entitled to an Order of Possession, pursuant to section 55(1) of the *Act*, I grant the Landlord an Order of Possession which requires the Tenant to vacate the rental unit 2 days after it is served upon the Tenant. This Order of Possession may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Order of Possession granted on April 08, 2022 replaces the previous Order of Possession granted on December 09, 2021.

The Landlord has established a monetary claim of $12,180.81 for unpaid rent and I grant a monetary Order in that amount. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The monetary Order granted on April 08, 2022 replaces the previous monetary Order granted on December 09, 2021.

The Landlord has the option to apply the Tenant's security deposit to the $12,180.81 owed to the Landlord, pursuant to section 72(2) of the *Act*.

This final decision replaces the previous decision of December 09, 2021.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 08, 2022

Residential Tenancy Branch