

## **DECISION**

### **Introduction**

This hearing dealt with the Tenants' June 11, 2023, Application for Dispute Resolution and the Landlord's June 13, 2023, 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 (the 10-Day Notice) pursuant to section 46 and an extension of the timeline for disputing the Notice, pursuant to section 66
- An order of possession under a 10-Day Notice pursuant to sections 46 and 55.
- A monetary order for unpaid rent pursuant to section 67

### **Preliminary Matters**

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At the outset of the hearing the Landlord sought to increase their monetary claim from \$7,650.00 to \$11,850.00 to reflect the Tenants' failure to pay \$2,100.00 in monthly rent for July and August 2023 rent, the additional months of unpaid rent waiting for this hearing.

*Residential Tenancy Branch Rules of Procedure*, Rule 4.2, 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**

Are the Tenants entitled to more time to dispute the Landlord's 10 Day Notice?

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession and Monetary Order?

## 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.

Evidence was provided showing that this tenancy began on December 15, 2021 with a monthly rent of \$2,100.00, due on fifteenth day of the month, with a security deposit in the amount of \$1,050.00

The Landlord served the 10-Day Notice on June 3, 2023, for unpaid rent from March 2023 to June 2023 and the Tenants disputed the 10-Day Notice.

The Landlord argued that between March 2022 to August 2023 the Tenants have only paid \$750.00 towards rent. The Landlord argued that the Tenants owe \$11,850.00 in unpaid rent for March to August 2023.

The Tenants' agent DF (the "Tenant's Agent") argued that the Landlord has made Tenant SS feel uncomfortable and has been aggressive towards them. The Tenants' Agent argued the stress the Landlord has caused and the stress of their personal life resulted in Tenant SS not applying to dispute the 10-Day Notice on time.

## Analysis

### **Are the Tenants entitled to more time to cancel the Landlord's 10-Day Notice?**

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 does 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).

I find that the 10 Day Notice was served on the Tenants on June 3, 2023, and that the Tenants had until June 8, 2023, to dispute the 10-Day Notice or to pay the full amount of the arrears.

The Tenants have applied for dispute resolution requesting more time to cancel a notice to end tenancy. Section 66 of the Act states that the director may extend a time limit established by the Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the notice.

The Tenants' Agent argued that Tenant SS was late disputing the 10-Day Notice because they have been stressed due to the situation with the Landlord and their

personal life. I find that that this does not qualify as an exceptional circumstance and an extension of time is not granted.

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

While I have not granted the Tenants an extension of time to dispute the 10-Day Notice, I must determine if the 10-Day Notice issued by the Landlord is valid. For a notice to end tenancy to be effective it must be in writing and must meet the requirements listed in s. 52 of the *Act*, including stating the move out date.

The 10-Day Notice is included in the evidence submitted by the Tenants and the Landlord. In both copies of the 10-Day Notice no move out date is listed. While s. 53 of the *Act*, gives me the authority to correct an incorrect move out date to the first opportunity that complies with the *Act*, it does not give me the authority to add a date when one is not listed.

I find that the 10-Day Notice is not effective since it does not comply with s.52 of the *Act* and the 10-Day Notice is cancelled. However, should the Landlord seek compensation for unpaid rent they can make an application for dispute resolution within the statutory time limit

**Conclusion**

The 10- Day Notice that was served on June 3, 2023 is cancelled. The 10- Day Notice is of no force or effect. This tenancy is to continue until ended in accordance with the *Act*.

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: August 4, 2023

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Residential Tenancy Branch