

DECISION

Introduction

This hearing dealt with the Tenant's Application dated August 15, 2023 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) under sections 46 and 55 of the Act
- cancellation of the Landlord's One Month Notice to End Tenancy for cause and additional time to dispute the notice under sections 47 and 66 of the Act

It also dealt with the Landlord's Application dated August 18, 2023 for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an order of possession following issuance of a One Month Notice to End Tenancy for cause under sections 47 and 55 of the Act
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- a monetary order to recover the filing fee under section 72 of the Act

Only the landlord attended the hearing. The hearing lasted until 12:00pm and at no point did the tenant call into the hearing, despite the fact that one of the applications was brought by them.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The landlord provided a copy of the Canada Post registered mail tracking information, confirming that the Proceeding Package for their application was sent. I find that tenant was served with the landlord's Proceeding Package in accordance with section 89(1) of the Act.

Service of Evidence

The landlord served all evidence relied upon at the hearing in accordance with the Act. The tenant did not submit any evidence.

Issue(s) to be Decided

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

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

Is the landlord entitled to monetary compensation for unpaid rent?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Evidence was provided showing that this tenancy began on June 1, 2023, with a monthly rent of \$2,200.00, payable in two installments of \$1,100.00 on the first and fifteenth of each month. No security or pet deposit was paid. The landlord discounted \$350.00 from the first month because of an issue relating to the previous tenant.

The tenant made the following payments since the start of the tenancy:

June 2, 2023: \$800.00
June 28, 2023: \$700.00
July 11, 2023: \$750.00
July 18, 2023: \$1,000.00
September 15, 2023: \$1,000.00

The landlord served the tenant with the One Month Notice on August 4, 2023 by leaving it in the mailbox. #RTB-33 was used, it was signed and dated by the landlord, gave the address of the rental unit, and stated the effective date of September 3, 2023. The reason indicated is that "Tenant is repeatedly late paying rent" and details relating to late payments in June, July and August were provided. The tenant brought their Application for Dispute Resolution on August 15, 2023.

Analysis

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

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

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.

The landlord was unable to provide any evidence related to the 10 Day Notice. Because the tenant filed an Application for Dispute Resolution, it is clear that some form of notice in relation to unpaid rent was provided. However, in the absence of any evidence from the landlord, I cancel the landlord's 10 Day Notice.

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

The One Month Notice provided one reason to end the tenancy: repeated late payments. RTB Policy Guideline 38 states that "Three late payments are the minimum number sufficient to justify a notice under these provisions".

I am satisfied that the tenant was late in paying rent in June, July, and August 2023. Following receipt of the One Month Notice, the tenant was late again in September 2023. In summary, for each of the four months since the start of the tenancy, the tenant has been late paying rent. The landlord has cause to end the tenancy and is granted an order of possession for September 30, 2023, which is the effective date of the One Month Notice in light of the date of service on August 4, 2023.

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

The tenant had shortfalls of \$350.00 in June, \$450.00 in July, \$2,200.00 in August and \$1,200.00 in September. The landlord is entitled to unpaid rent in the amount of \$4,200.00.

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

The landlord was successful in their application. They are entitled to recover the filing fee for this application from the landlord under section 72 of the Act.

Conclusion

I grant the landlord a Monetary Order in the amount of **\$4,300** under the following terms. The tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply, it may be enforced in the Small Claims Division of the Provincial Court.

Unpaid rent	\$4,200.00
Less – Security deposit with interest	\$100.00
Total	\$4,300.00

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: September 21, 2023

Residential Tenancy Branch