

DECISION

Introduction

This hearing was originally scheduled to be heard on September 12, 2023 and was adjourned to October 3, 2023.

This hearing dealt with cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant requested:

- 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
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act.

Both parties attended the hearing.

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?

Is the landlord entitled to a monetary order for unpaid rent?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

On June 19, 2023, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent for the tenant's failure to pay the rent for the months of July and August 2020. The 10 Day Notice was posted on the tenant's door, and the tenant disputed the 10 Day Notice on June 26, 2020.

The landlord submitted text message communication between the two parties, and submits that the tenant agreed to start paying the outstanding rent in \$100.00 instalments starting on August 1, 2022, but no payments have been received.

The tenant does not dispute that they still owe the landlord the rent for the months of July and August 2020. The tenant testified that the landlord never provided the tenant with a proper re-payment plan in writing for the outstanding rent. The tenant testified that the two parties did discuss repayment of the rent, but the landlord did not provide the tenant with anything formally in writing requesting the outstanding rent before the 10 Day Notice was served.

Analysis

As the 10 Day Notice was posted on the tenant's door on June 19, 2023, the 10 Day Notice is deemed served on June 21, 2023, 3 days after posting. I find that the tenant filed their application pursuant to section 46(4) of the *Act*, within five days of receiving the 10 Day Notice as required by the *Act*. I must now consider whether the 10 Day Notice is valid.

Section 26 of the *Act* requires that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

The tenant does not dispute that they owe \$4,400.00 in outstanding rent dating back to July and August 2020, but stated that they were never provided with a Repayment Plan.

I note that the July and August 2020 did fall under the "affected rent" period of March 18, 2020 to August 17, 2020. As per the Residential Tenancy Policy Guideline #52 COVID-19: Repayment Plans and Related Measures and associated regulation, "a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent, unless a prior agreement has been entered into and has not been cancelled. If the parties are no longer in a landlord-tenant relationship because the tenancy has ended, a repayment plan would not be required."

Residential Tenancy Policy Guideline #52 states the following:

The C19 Tenancy Regulation requires that the repayment plan be in writing and include:

- The date the repayment period starts;
- The total amount of affected rent that is unpaid;
- The date on which each installment must be paid; and
- The amount that must be paid in each installment.

If a repayment plan does not comply with the terms and requirements set out above, it has no effect. If a repayment plan has no effect, it cannot form the basis for a 10 Day Notice to End Tenancy for Unpaid Rent and it cannot cancel a prior agreement. A repayment plan will only take effect when the landlord or tenant, who is giving the repayment plan, gives it to the other person and it complies with the requirements and terms.

A landlord must not give a tenant a 10 Day Notice to End Tenancy for unpaid affected rent unless the landlord has previously given the tenant a valid repayment plan or there is a valid prior agreement.

Although both parties may have discussed the implementation of a repayment plan, I do not find that the landlord had given the tenant a repayment plan in a manner set out in the Policy Guideline as noted above, nor do I find that there was a valid prior agreement in writing. Furthermore, I find that the landlord waited a substantial amount of time before serving the tenant with the 10 Day Notice. I find that prior to the issuance of this 10 Day Notice, the landlord did not provide the tenant with any formal warning letters, nor did the two parties enter into any mutual agreements in writing for repayment of the affected rent. I find that by failing to do these things, I find that the repayment terms for the \$4,400.00 were not clearly set out for the tenant.

I find that the tenant's concerns about the lack of clarity about the outstanding rent to be valid. Accordingly, I allow the tenant's application to cancel the 10 Day Notice to End Tenancy dated June 19, 2023. The landlord's application for an Order of Possession pursuant to the 10 Day Notice is dismissed without leave to reapply. The tenancy is to continue until ended in accordance with the *Act*.

I note that the Covid 19 Tenancy Regulation set out that repayment plans were to start on the date the landlord gave the repayment plan, and was to end on July 10, 2021. As the tenant does not dispute that they have not paid the rent for the months of July 2020 and August 2020, and as the tenant had over two years to repay the outstanding rent, I allow the landlord's application for a monetary order in the amount of \$4,400.00 for this period.

The tenant requested recover of the filing fee paid for their application. As both applications had some merit, I will allow the tenant to recover half of the filing fee.

Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice. The 10 Day Notice is of no force effect. The tenancy will continue until ended in accordance with the *Act*.

I issue a \$4.350.00 Monetary Order in favour of the landlord as set out in the table below:

Item	Amount
------	--------

Unpaid Rent for July & August 2020	\$4,400.00
Less Half of Filing Fee	-50.00
Total Monetary Order	\$4,350.00

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 in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the remainder of the landlord's application 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 *Residential Tenancy Act*.

Dated: October 18, 2023

Residential Tenancy Branch