

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's Application for Dispute Resolutions under the *Residential Tenancy Act* (the "Act") for:

- Cancellation of Two 10-Day Notices to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice") pursuant to section 46
- Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") under section 47 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

### **Issues to be Decided**

- Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?
- Should the Landlord's 10-Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee for this application from the Landlord?

### **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 May 6, 2018, with a monthly rent of \$1,670.00 due on first day of the month, with a security deposit in the amount of \$400.00

The Tenant was served with a 10-Day Notice on July 25, 2023 (the "July 10-Day Notice"), another 10-Day Notice on August 18, 2023 (the "August 10-Day Notice") and a

One Month Notice for Cause on July 25, 2023, and they have applied to dispute all three notices.

#### July 10-Day Notice

The Landlord's agent GS (the "Landlord's Agent") argued they issued the 10-Day Notice on July 25, 2023, because the Tenant did not pay July 2023 rent on July 1, 2023.

The Tenant's Advocate VB (the "Tenant's Advocate") argued the Tenant previously paid rent by sliding the rent cheque under the door that separated the Tenant's rental unit from the Landlord's unit (the "Shared Door"). The Tenant's Advocate advised in May and June 2023, the Landlord returned the cheques under the door, and they got lost behind a treadmill. Moving forward, the Tenant began paying rent by sending the cheque via registered mail.

The Tenant's Advocate argued the Tenant paid rent on July 7, 2023, by sending the cheque by registered mail and the Landlord returned the cheque under the shared door. The Landlord verified they did receive the July 2023 rent cheque and returned it to the Tenant. The Landlord couldn't remember why they returned the cheque, but they believe there was something wrong with the date. The Landlord requested the Tenant fix the cheque, initial it, and return the July 2023 rent cheque.

The Tenant's Advocate argued the Tenant returned the July 2023 rent cheque under the shared door after they initialed by the date. The Tenant submitted a photo of them sliding the cheque under the Shared Door. I will note that the photo does not show the cheque, but a white folded paper or envelope. The Tenant's Advocate argued that the Tenant has paid their rent consistently and in the same way since January 2023. The Tenant always provides a cheque that is dated for the first of the month, signed and with the memo line filled out. The Tenant submitted the Legal Advocate's letter dated June 30, 2023, and the Tenant's affidavit dated October 12, 2023 in support of their version of events.

The Landlord disputed that the rent cheque for July 2023 was ever returned under the Shared Door by the Tenant.

#### August 10-Day Notice

The Landlord's Agent argued that the Tenant paid August 2023 rent by cheque; however, since July 2023 rent was missing, August 2023 rent was applied to July 2023 rent and the Tenant owed rent for August 2023. The Landlord issued another 10-Day

Notice for August 2023 rent on August 16, 2023. The Landlord's Agent argued that \$1,670.00 is owed for unpaid rent.

The Tenant's Advocate argued the Tenant paid rent for August 2023 and provided a bank statement showing the cheque and the date the Landlord deposited the cheque.

### One Month Notice

The Reasons for cause selected on the One Month Notice were, repeatedly late paying rent, security and/or pet damage deposit was not paid within 30 days and the Tenant has seriously jeopardized the health and safety of the Landlord.

The Landlord's Agent advised the Landlord was only pursuing the cause of repeated late payment of rent. The other two reasons of cause were dropped by the Landlord.

The Landlord's Agent argued the Tenant has been repeatedly late paying rent. The Landlord's Agent argued since July 2023 rent was missed, every rent payment from August 2023 to October 2023 is considered late. Additionally, the Landlord's Agent pointed to the Landlord's rent ledger, which shows rent being paid on either the 4<sup>th</sup>, 5<sup>th</sup> or 6<sup>th</sup> every month.

The Tenant's Advocate argued the date on the Landlord's rent ledger is the date the Landlord cashes the cheques and not the date the Tenant pays rent. To support this the Tenant's Advocate pointed to the Tenant's bank statements since January 2023 (collectively, "The Bank Statements"). The Tenant's Advocate argued the date that is listed on the Bank Statements as the day the cheque was cashed matches the date the Landlord has listed in the rent ledger as the date rent was received. The Tenant's Agent also argued anything after the One Month Notice was issued would have to be addressed in a separate One Month Notice.

## **Analysis**

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

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential

Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

As the Tenant disputed this notice on August 3, 2023, and since I have found that the One Month Notice was served to the Tenant on July 25, 2023, I find that the Tenant has applied to dispute the One Month Notice within the time frame allowed by section 47 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the One Month Notice.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has failed to prove that they have sufficient cause to issue the One Month Notice to the Tenant and obtain an end to this tenancy.

According to Policy Guideline 38, a minimum of 3 late payments justifies a One Month Notice for Cause. I find the Landlord has provided insufficient evidence to establish the Tenant was late paying rent a minimum of 3 times. The dates listed on Landlord's rent ledger as the date they received rent from the Tenant matches the dates on the Bank Statements showing the date the rent cheques were cashed. To be considered late rent the rent must be paid to a landlord after it is due, not cashed by a landlord after the date rent is due.

Additionally, I find that the rent payments from August 2023 to October 2023 are insufficient to lay a foundation in support of the One Month Notice that was issued on July 25, 2023. The rent payments did not exist at the time the One Month Notice was issued and could not have formed the basis for issuing the One Month Notice.

Therefore, the Tenant's application is granted for cancellation of the One Month Notice under section 47 of the Act.

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

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).

### July 10-Day Notice

I find that the July 10-Day Notice was duly served to the Tenant on July 25, 2023, and that the Tenant had until July 30, 2023, to dispute the 10-Day Notice or to pay the full amount of the arrears. The Tenant disputed the July 10-Day Notice on July 28, 2023, which is within the timeframe required.

Both parties agree July 2023 rent was originally paid by the Tenant, but the Landlord returned the July 2023 rent cheque to the Tenant. Both parties have given a different version of events regarding what happened to the July 2023 rent cheque after the Landlord returned it. Where one parties provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has to shift the balance in their favour.

In this case, I accept the Tenant's version of events over the Landlord. The Bank Statement and the Landlord's rent ledger supports a history of the Tenant paying rent every month. The Tenant also continued to pay rent every month after the July 10-Day Notice was issued. I also accept that the Landlord and Tenant had issues leading up to the July 2023 10-Day Notice. For example, the Landlord had returned rent cheques under the Shared Door and they were lost under a treadmill. This is supported by the Legal Advocate's letter dated June 30, 2023, and the Tenant's affidavit dated October 12, 2023. While the picture provided by the Tenant showing them sliding the July 2023 rent cheque back under the door, does not show the cheque, it does corroborate the version of events presented at the hearing. Additionally, the Tenant's version of events is further corroborated by their affidavit.

Given the above, I find, on a balance of probabilities, that the Tenant did pay rent due for July 2023. Therefore, I am not satisfied, that on a balance of probabilities, the July 10-Day Notice was given for a valid reason, namely, the non-payment of rent.

### August 10-Day Notice

I find that the August 10-Day Notice was duly served to the Tenant on August 16, 2023, and that the Tenant had until August 21, 2023, to dispute the 10-Day Notice or to pay the full amount of the arrears. The Tenant disputed the August 10-Day Notice on August 18, 2023, which is within the timeframe required.

I find that the August 10-Day Notice was not issued for a valid reason, as August 2023 rent was paid. The Tenant provided the Bank Statements which show a copy of the August 2023 rent cheque and that it was cashed by the Landlord August 8, 2023.

Based on the above, I grant the Tenant's application to cancel the July 10-Day Notice and August 10-Day Notice.

**Is the Tenant entitled to recover the filing fee for this application from the Landlord?**

As the Tenant was successful in their applications, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for each of the three applications under section 72 of the Act. I authorize the Tenant to deduct \$300.00 from their next rent payment to recover the \$100.00 filing fee for each of the three applications.

**Conclusion**

The Tenant's application is granted for cancellation of the One Month Notice under section 47 of the Act. The One Month Notice of July 25, 2023 is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the Act.

The Tenant's application is granted for cancellation of the July 10-Day Notice and August 10-Day Notice. The July 10-Day Notice of July 25, 2023 and August 10-Day Notice of August 16, 2023 is of no force or effect. This tenancy continues until it is ended in accordance with the Act.

The Tenant is authorized to deduct \$300.00 from one future rent payment since they are entitled to recover the filing fee for the 3 applications.

During the hearing the parties advised they would be agreeable to rent being paid by post-dated cheques. As such, the Tenant shall pay rent by post-dated cheques, unless the parties agree to another method of payment, pursuant to section 62(3) of 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 Act.

Dated: November 9, 2023

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Residential Tenancy Branch