

DECISION

Introduction

This hearing dealt with the Tenant's Application dated September 18, 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 2 Month Notice to End Tenancy for Landlord's Use of Property under section 49 of the Act;
- a monetary order for compensation for monetary loss or other money owed under section 67 of the Act
- disputing a rent increase that is above the amount allowed by law under section 43 of the Act
- an order reducing rent for repairs, services or facilities agreed upon but not provided under section 65 of the Act
- an order requiring the landlord to provide services or facilities required by the tenancy agreement or law under section 27 of the Act
- an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act
- an order requiring the landlord to comply with the Act, regulation and/or tenancy agreement under section 65 of the Act
- a monetary order to recover the filing fee under section 72 of the Act

It also dealt with the Landlord's Application dated September 25, 2023 for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an order of possession following issuance of a 10 Day Notice to End Tenancy for Unpaid Rent under sections 46 and 55 of the Act
- an order of possession because the rental unit is uninhabitable and the tenancy agreement is frustrated under section 56.1 of the Act
- a monetary order for compensation for unpaid rent and/or utilities under sections 46 and 55 of the Act
- a monetary order for compensation for damage caused by the tenant, or their pets or guests under section 67 of the Act
- a monetary order to recover the filing fee under section 72 of the Act

The tenant and the landlord attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I am satisfied that the tenant's Proceeding Package was served personally, in accordance with the Act.

The tenant said that they did not receive anything from the landlord. The landlord said he took a picture of the Proceeding Package posted to the door but did not submit it as evidence. In the absence of any corroborating evidence of when and how the landlord gave their application to the tenant, I dismiss the landlord's application with leave to reapply. Leave to reapply is not an extension of timeline to apply.

Evidence

The landlord failed to establish they gave any of the material they provided to RTB to the tenant so I did not review it and considered only their oral testimony. The landlord did not dispute receiving the tenant's evidence and so I am satisfied that it was served in accordance with the Act.

Preliminary Issue – Related claims

Under Rule 2.3 claims must be related to each other. The hearing addressed the tenant's most urgent claim, relating to the 10 Day Notice and possession of the rental unit. The tenant's other claims are dismissed with leave to reapply.

Issue(s) to be Decided

Should the 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

Evidence was provided showing that this tenancy began on May 8, 2020, with a monthly rent of \$2,200.00, payable on the first of the month. A security deposit in the amount of \$1,100.00 was paid to the landlord. The tenancy agreement provides that water is not included in the rent and, in an addendum, that all utilities are to be paid by the tenant. Following a rent increase that took effect on February 1, 2023, the rent is \$2,244.00.

Between the start of the tenancy and October 2022, the tenant did not pay the City of Surrey water utility bill. This is because the landlord never sent her the bill or requested payment. On October 22, 2022, the landlord sent a written demand to the tenant stating that \$2,044.59 in unpaid utilities were owed. The landlord included an invoice dated

February 16, 2022 (\$1,014.54) and a payment reminder for a separate invoice dated May 5, 2021 (\$1,030.05) from the City of Surrey for water.

Following receipt of the written demand, the parties discussed a payment plan whereby the tenant would pay \$2,350.00 in monthly rent rather than \$2,200.00 in order to allow the tenant to catch up on the utility arrears. For four months, from November 2022 to February 2023, the tenant paid \$2,350.00 per month. On February 1, 2023, a rent increase took effect, where the base monthly rent (excluding any extra amount allocated towards utilities) went from \$2,200.00 to \$2,244.00. As of March 2023, the tenant stopped paying the extra \$150.00 per month for utility arrears because the landlord refused to put their agreement in writing.

The landlord said at the hearing that he also has a water bill dated February 16, 2023 for \$1,044.00 that is unpaid. He did not provide evidence showing that a written demand including this bill was ever sent to the tenant. He also said there was a water bill dated February 16, 2020 for \$800 that was not paid. No evidence showing a written demand was ever sent to the tenant in relation to this bill. The 2020 bill predated the start of the tenancy.

The landlord served the tenant with the 10 Day Notice by posting a copy on the door on or around September 16, 2023. #RTB-30 was used, it was signed and dated by the landlord, gave the address of the rental unit, and stated the effective date of September 30, 2023. The 10 Day Notice indicated that the tenant owed \$4,150.00 in unpaid utilities and that a written demand was provided on September 18, 2023, a date which is after service of the 10 Day Notice.

On September 18, 2023, the tenant paid \$2,045.00 to the landlord following receipt of the 10 Day Notice. The tenant also filed for dispute resolution on September 18, 2023.

Analysis

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an order of possession?

Under the tenancy agreement, the tenant is required to pay utilities, including the water bill. As the utilities are not in the name of the tenant, the landlord must provide a written demand for payment. The written demand should include the bills from the utility company.

Section 46 of the Act states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice to end the tenancy.

The landlord gave the tenant a written demand on October 20, 2022 for \$2,044.59. While there may be other utility bills owing (for example for 2023), these were never sent to the tenant.

The tenant did not pay the bills within 30 days of October 20, 2022, because she and the landlord had discussed a payment plan. The tenant paid \$2,350.00 rent for 4 months, from November 2022 to February 2023. This represented an extra \$150.00 for the first 3 months, and an extra \$106.00 for the final month because rent had been increased to \$2,244.00. In total, the tenant paid \$556.00 extra towards utilities during this period.

After receiving the 10 Day Notice, the tenant paid the landlord \$2,045.00 on September 18, 2023. This is \$0.41 more than the amount referred to in the written demand on October 17, 2022. In addition, this does not account for the \$556.00 the tenant paid to the landlord in relation to utilities between November 2022 and February 2023. The tenant has therefore paid \$2,601.00 in relation to utilities despite only owing \$2,044.59 (at present).

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 payment of \$2,045.00 cancels the notice because it was done within 5 days of receipt and was the actual amount owing by the tenant (plus \$556.41). The tenancy will continue until ended in accordance with the Act.

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

The tenant was successful and is therefore entitled to recover the filing fee in accordance with the Act.

Conclusion

The tenant's application to cancel the 10 Day Notice is granted. The tenant's application to recover the filing fee is also granted. The tenant is authorized to deduct \$656.41 from rent due on December 1, 2023 based on the following:

Monetary Issue	Granted Amount
Excess amount paid for utilities	\$556.41
authorization to recover the filing fee for this application from the tenant under section 72 of the Act	\$100.00
Total Amount	\$656.41

The landlord is entitled to serve a written demand for any outstanding utilities to the tenant (for example, the February 2023 bill). The bill should be served in accordance with the Act.

If the landlord takes the position that unpaid rent is owing, the landlord can serve a 10 Day Notice but should use the space provided for unpaid rent and not combine utilities and rent together. The landlord should also provide the tenant with an accounting explaining which months were unpaid or underpaid.

The tenant's application to cancel the 10 Day Notice is granted. The remainder of the tenant's application is dismissed with leave to re-apply.

The landlord's application for an order of possession following service of a 10 Day Notice is dismissed because the 10 Day Notice is of no force or effect. The remainder of the landlord's application is dismissed with leave to re-apply.

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: November 8, 2023

Residential Tenancy Branch