

## **DECISION**

### **Introduction**

This hearing was convened following applications for dispute resolution from both parties under the *Residential Tenancy Act* (the Act), which were heard simultaneously.

The Tenant requests the following:

- 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
- an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

The Landlord requests the following:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) under sections 46 and 55 of the Act

BT and AH attended for the Landlord.

Tenant RH attended for the Tenant.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

The tenant acknowledged service of the Proceeding Package. I find that they were duly served in accordance with the Act.

The landlord acknowledged service of the Proceeding Package. I find that they were duly served in accordance with the Act.

### **Service of Evidence**

As the parties acknowledged receipt of each other's documentary evidence and did not raise any concerns regarding evidence, I accepted the documentary evidence before me for consideration.

### **Issues 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 tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act?

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

## **Preliminary Matters**

I informed the parties at the outset that, due to time constraints, I was only going to hear the most urgent claim to ensure we finish on time. I determined the most urgent claim to be whether the tenancy would continue and if not, whether the landlord was entitled to an Order of Possession.

## **Background and Evidence**

The Tenant entered into a tenancy agreement with the Landlord which commenced August 1, 2020. The Landlord is a company that is operated by BT. The tenancy was agreed to verbally between RH and BT. A written tenancy agreement was not subsequently prepared.

Monthly rent of \$1,250.00, was due on the first day of the month. A security deposit was not held by the Landlord.

The Tenant typically paid rent via post-dated cheques which he would provide mail to the Landlord in advance of the due date for rent.

The Landlord did not receive a post-dated cheque for October 1, 2023, and the Tenant's rent went unpaid as a result.

On October 1, 2023, the Landlord's agent sent a 10 Day notice to end tenancy for unpaid rent via registered mail to the address of the Tenant's rental unit. This notice stated the Tenant failed to rent of \$1,250.00 that was due on October 1, 2023.

When the Landlord did not hear from the Tenant, she applied on October 12 for an Order of Possession. The Landlord attached the notice of dispute to the door of the Tenant's residence on October 14, 2023.

The Tenant said that he did not realize that he failed to provide the Landlord with post-dated cheques for October until he saw the notice of dispute resolution proceeding attached to his door. He said that he was surprised by this, as he had not been notified by phone call or email that they were out of cheques.

The Tenant immediately went next door to the BT's personal residence and placed post-dated cheques for October, November, December, and January, in a plastic bag under the doormat. He also emailed the Landlord to apologize for the delay in payment. BT acknowledged that the cheques had been received.

BT did not deposit the cheques. BT replied that it was not his responsibility to remind the Tenant to provide cheques and pay rent on time. He added that the Landlord is a company, and that he was not required or inclined to accept delivery of the cheques at his residence. He proposed that the Tenant was obligated to deliver the cheques to the Landlord's business address in Victoria.

Further to the 10 Day Notice that was issued, BT claimed that the Tenant failed to either pay the outstanding rent or dispute the notice within the time permitted. The Landlord sought possession of the rental unit for this reason.

At the hearing held November 17, the Tenant denied that he had received the 10 Day Notice. He explained that the property at which he resides does not have a mailbox. Rather, there is a collection of multiple postboxes at another location for which he has a key. The key he had for it did not work. The Tenant said that he had raised the issue of the key not working with BT on "day one" of his tenancy. The problem with the mail key was not resolved and as a result he remained unable to access the mailbox for the duration of his tenancy. He said that for this reason he had arranged for all of his mail to be delivered to his office address during this entire period.

BT acknowledged that the Tenant told him that at the outset that his mailbox key did not work. BT had his own copy of the mailbox key which he said worked and suggested that perhaps the Tenant had attempted to open the wrong box. BT said that he had not heard anything further about the key being an issue for years.

## **Analysis**

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

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved (Residential Tenancy Branch) form

I have reviewed the 10 Day Notice and note that it is in the approved form, signed and dated by the Landlord, and that it indicates that there is unpaid rent. I find that it complies with section 52 of the Act.

Section 88 of the Act states that documents that are to be served on a person must be given or served in a prescribed manner, including by sending a copy by ordinary mail or registered mail to the address at which the person resides. Policy Guideline #12 states that if service is in dispute, an arbitrator may consider evidence from both the party receiving the document and the party serving the document to determine when service occurred.

I have determined that the Tenant was not served with the Landlord's 10 Day Notice to end tenancy for unpaid rent. In reaching this conclusion I have accepted the Tenant's claim that he lacked access to the post box assigned to the rental property because the mail key that he had received did not work. He said that he brought this to BT's attention at the outset and I note that BT acknowledged this. BT proposed that perhaps the tenant was attempting to open the wrong box but did not otherwise suggest that he had seen to the resolution of this issue. I am satisfied that the Tenant remained unable to access the mailbox for the duration of the tenancy. The evidence does not indicate that the Tenant agreed to or provided a specific address for service purposes.

The Notice was not served in accordance with section 88 of the Act. For this reason, the Tenant's application for cancellation of the landlord's 10 Day Notice is granted.

The Landlord's undated 10 Day Notice is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

**Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act?**

I informed the parties at the outset that, due to time constraints, I would not be able to hear this claim. For this reason, the tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act is dismissed, with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

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

As the tenant was successful in their application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

In accordance with section 72 of the Act, I order the Tenant to deduct \$100.00 from their next rent payment in full satisfaction of the monetary award for the filing fee.

**Conclusion**

The Tenant's application for cancellation of the landlord's 10 Day Notice is granted.

The Landlord's 10 Day Notice is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

I order the Tenant to deduct \$100 from their next rent payment in full satisfaction of the monetary award for the filing fee.

The tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act is dismissed, with 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 Act.

Dated: December 6, 2023

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Residential Tenancy Branch