

## **DECISION**

### **Introduction**

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent of Utilities (the 10 Day Notice) under section 46 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

It also dealt with the Landlord's Application under the Act for:

- an Order of Possession based on a 10 Day Notice under sections 46 and 55 of the Act
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

The landlord and the tenants attended the hearing.

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

The landlord served the Proceeding Package in person. The tenants served the Proceeding Package by registered mail. Each party acknowledged service of the other party's Proceeding Package.

### **Service of Evidence**

Neither party raised any issue with respect to service of evidence.

### **Issues to be Decided**

Is the 10 Day Notice Valid? If so, should the landlord be granted an Order of Possession?

Should either party be authorized to recover the filing fee from the other party?

## Background and Evidence

The tenancy began on August 1, 1999. Monthly rent is payable on the first of the month. The current rent is \$1,535.36. The landlord is holding a security deposit in the amount of \$575.00.

The tenants' November 1, 2023 rent cheque was returned "NSF". On November 14, 2023, the landlord served the tenants' with a 10 Day Notice to End Tenancy, stating that \$1,535.36 in unpaid rent is owing as of November 1, 2023. The 10 Day Notice used form RTB-30, was signed by the landlord, stated the name of the landlord and one of the tenants, stated the address of the rental unit. It had no effective date.

The tenants paid November rent in full by providing the landlord with a cheque on November 16, 2023.

## Analysis

### **Is the 10 Day Notice Valid? If so, should the landlord be granted 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(s) do 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).

The 10 Day Notice is of no effect because the tenants paid rent owing within 5 days of service. Section 46 of the Act provides as follows (emphasis added):

Landlord's notice: non-payment of rent

46 (1)A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2)A notice under this section must comply with section 52 [form and content of notice to end tenancy].

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

**(4)Within 5 days after receiving a notice under this section, the tenant may**

**(a)pay the overdue rent, in which case the notice has no effect, or**

(b)dispute the notice by making an application for dispute resolution.

(5)If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit to which the notice relates by that date.

(6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)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 under this section.

The 10 Day Notice is therefore of no effect by operation of the Act.

### **Should either party be authorized to recover the filing fee from the other party?**

The landlord is not authorized to recover the filing fee because he was not successful. I also find that the tenants are not authorized to recover the filing fee. There was no need to file their application. The tenants explained that they did so “out of an abundance of caution” and in case the landlord did not cash their cheque, however they had video evidence that he accepted it.

### **Conclusion**

The landlord’s application is dismissed without leave to reapply. The tenants’ application is also dismissed without leave to reapply because the 10 Day Notice was of no effect by operation 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: December 11, 2023

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Residential Tenancy Branch