

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's application 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 (10 Day Notice) under sections 46 and 55 of the Act

This hearing also dealt with the Landlord's cross application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenants did not attend the hearing.

The Landlord Y.H.T.H. and Landlord's Agent D.S.N. attended the hearing.

### **Service of Notice of Dispute Resolution Proceeding and Evidence**

#### **1. Tenant's Application**

Given that the Landlord was present Tenant's Application, I find the Landlord was served with the Tenant's Application in compliance with section 89 of the Act. I note that the Tenant did not submit any evidence to the Residential Tenancy Branch for their application.

#### **2. Landlord's cross Application**

The Landlord testified that they served the Notice of Dispute on January 25, 2024, by pre-arranged email. The Landlord's evidence included a completed copy of the Address for Service form. In addition, the Landlord testified that the Tenant acknowledged receipt of the cross application and evidence in a reply email on the same day.

I find the Landlord served their cross Application and evidence in compliance with section 88 and 89 of the Act on January 25, 2024, and deemed received on

January 28, 2024, the third day after the email was sent, pursuant to section 44 of the Regulations.

## **Preliminary Matters – Naming**

I note the Tenant's application and the Landlord's cross application contained a discrepancy on the spelling for one of the Tenants. The Landlord testified that the Tenant B.H. also goes by the other name N.B., the full name N.B. is referenced on the cover page of this decision.

Based on the undisputed testimony of the Landlord, the written tenancy agreement, and on a balance of probabilities, I find it is more likely than not that the Tenant B.H. from the Landlord's application and Tenant N.B. from the Tenant's application are the same person.

Therefore, I exercise my authority under section 64(c) of the Act and Rule 7.7 of the Rules of Procedure to amend the participants contained Tenant's application to match the participants named in the Landlord's application.

## **Issues to be Decided**

Does the 10 Day Notice end the tenancy?

Is the Landlord entitled to an Order of Possession?

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

Is the Landlord entitled to recover the filing fee for the cross application from the Tenant under section 72 of the Act?

## **Background and Evidence**

I have reviewed the evidence, including the testimony of the Landlord, but will refer only to what I find relevant for my decision.

The written tenancy agreement was provided which showed that this fixed-term tenancy began on October 1, 2022, and was scheduled to end on December 31, 2023. The written tenancy indicated that the Tenant must vacate the rental unit at the end of the fixed term for the Landlord's personal use. The monthly rent was \$2,368.44 and payable on the first of the month. The Landlord continues to hold the Tenant's \$1,000.00 security deposit in trust. The Landlord testified that they have not been provided with the Tenant's forwarding address.

The Landlord testified that the Tenants moved out of the rental unit sometime in December of 2023, and subsequently multiple individuals who are not the Tenants moved in and continue to live at the rental unit. The Landlord claimed that the Tenant

owed rent for January and February of 2024. To recover the unpaid rent and gain possession of the rental unit, the Landlord served the Tenant with the 10 Day notice on January 12, 2024, by pre-agreed email.

The Landlord stated that the Tenant also owed strata fees in addition to the unpaid rent. The Landlord multiplied the monthly rent by two to calculate the current total amount of unpaid rent to be \$4,736.88. The Landlord's evidence did not include a ledger for the unpaid rent. The Landlord calculated the total amount of owed strata fees to be \$208.00. The Landlord requested for possession of the rental unit as soon as possible.

## **Analysis**

### **Does the 10 Day Notice end the tenancy?**

While the Tenant and the Landlord's application focused on the validity of the 10 Day Notice, the written tenancy agreement's fixed term end date provided that the end of the tenancy was scheduled for December 31, 2023. The written tenancy agreement included a vacate clause, which provided that the Tenant will vacate the rental unit at the end of the fixed term.

According to the written tenancy agreement, I find that the tenancy has already ended as of December 31, 2023. Neither party has not provided any evidence or testimony to show that a new tenancy was negotiated.

Given the tenancy has already ended, I find the 10 Day Notice is not relevant and I exercise my authority to cancel the Landlord's 10 Day Notice.

### **Is the Landlord entitled to an Order of Possession?**

Based on the written tenancy agreement, the tenancy ended on December 31, 2023, and the Landlord gained possession of the rental unit when the Tenant vacated.

I find the Landlord's request for an Order of Possession of irrelevant given the written tenancy agreement has already given the Landlord authority to repossess the rental unit.

Based on the above, I dismiss the Landlord's request for an Order of Possession, without leave to reapply.

### **Is the Landlord entitled to a Monetary Order for unpaid rent?**

Based on the finding that the tenancy ended on December 31, 2023, the Tenant would not be responsible for paying rent since the tenancy ended.

Accordingly, I find the Landlord is not entitled to a monetary order for unpaid rent.

Based on the above, I dismiss the Landlord's request for a Monetary Order for unpaid rent, without leave to reapply.

**Is the Landlord entitled to recover the filing fee for the cross application from the Tenant under section 72 of the Act?**

Given the Landlord has not succeeded in their application, I find the Landlord is not entitled to recover the \$100.00 filing fee from the Tenant for their cross application.

Based on the above, I dismiss the Landlord's request to recover the filing fee for their cross application.

**Conclusion**

I cancel the Landlord's 10 Day Notice since the tenancy has already ended.

The Landlord is not entitled to an Order of Possession.

The Landlord is not entitled to a Monetary Order for unpaid rent.

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: February 20, 2024

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Residential Tenancy Branch