

## **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
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 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 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
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 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 attended the hearing.

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

I am satisfied that the Tenants served their Proceeding Package on the Landlord by registered mail and in accordance with the Act.

I am not satisfied that the Landlord served their Proceeding Package on the Tenants. The Landlord initially said she posted the Proceeding Package on the door and then said that she hand delivered it. No evidence of either was submitted. Because I am not satisfied that the Landlord served the Tenants, the Landlord's application is dismissed

with leave to reapply, except for the claims for an Order of Possession and recovery of the filing fee, which are both dismissed without leave to reapply.

The hearing proceeded on the Tenants' application, because the Landlord sought unpaid rent owing under section 55 of the Act.

## **Service of Evidence**

The Landlord did not rely on any documentary evidence other than the 10 Day Notice, which was submitted by the Tenants.

## **Issues to be Decided**

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

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

Is the Landlord entitled to recover the filing fee from the Tenants?

## **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.

The tenancy began on September 15, 2023. Monthly rent was \$1,750.00 payable on the first of the month. The Tenants paid a security deposit of \$1,000.00.

The Tenants did not pay rent in December 2023, January 2024, or February 2024.

On January 22, 2024, the Landlord served a 10 Day Notice using form RTB-30 by posting it on the door of the rental unit. The 10 Day Notice provides an effective date, is signed by the Landlord, has the address of the rental unit, and states that \$1,750.00 is owing as of January 15, 2024.

On January 25, 2024, the Tenants amended their pre-existing application related to a One Month Notice, which was filed on January 7, 2024.

The Tenants made no payments to the Landlord following receipt of the 10 Day Notice. The Tenants moved out on or around March 1, 2024.

## **Analysis**

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

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).

I find that the 10 Day Notice was duly served to the Tenants on January 22, 2024, and that the Tenants had until January 27, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenants disputed the 10 Day Notice on January 25, 2024.

I find that the Tenants did not pay rent in January 2024. I also accept that the Tenants did not pay rent in December 2023 or February 2024. I find that the 10 Day Notice complies with the Act. I also find that it is appropriate to amend the amount due to reflect the actual amount of rent owing as of January 15, 2024, which is \$3,500.00 (December 2023, January 2024). I also find it is appropriate to award the Landlord additional rent incurred since the 10 Day Notice, because the Tenants would have been aware that this amount was due. I therefore award the Landlord \$5,250.00.

The Tenants application to cancel the 10 Day Notice is therefore dismissed without leave to reapply.

The Landlord is not given an Order of Possession because the Tenants have vacated the rental unit.

The Landlord is entitled to unpaid rent in the amount of \$5,250.00.

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

The Tenants have vacated the rental unit and I therefore do not need to consider this issue.

**Conclusion**

The Tenants' application is dismissed without leave to reapply.

The Landlord's application is dismissed with leave to reapply, except for the claim related to the One Month Notice and the filing fee.

I grant the Landlord a Monetary Order in the amount of **\$4,237.96** under the following terms:

<b>Monetary Issue</b>	<b>Granted Amount</b>
Unpaid rent	\$5,250.00
Less security deposit with interest	\$1,012.04
<b>Total Amount</b>	<b>\$4,237.96</b>

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 25, 2024

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Residential Tenancy Branch