

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
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing dealt with the Landlord's Application for Dispute Resolution 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
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

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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 landlord entitled to a Monetary Order for unpaid rent?

Is the tenant entitled to a Monetary Order for compensation for damage or loss under the Act?

Is the tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to an order for the landlord to make repairs to the rental unit?

Is the Tennant entitled to recover the filing fee for this application from the Landlord?

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Background and Evidence

I have heard all the testimony of the parties but will refer only to what I find relevant for my decision.

The Tenant provided a copy of the Residential Tenancy Branch decision, dated January 19, 2024, from hearing 910138290 in which the arbitrator found that the landlord imposed an illegal rent increase on the tenant and awarded the Tenant a rent deduction of \$576.00 to be deducted from future rent.

The arbitrator further ordered the Tenant's monthly rent returned to \$2152.00, beginning February 2024 and it will remain this amount until the landlord increases the monthly rent in the legally required manner.

The Landlord provided a copy of the 10 Day Notice. It is signed January 1, 2024, with a move out date of January 21, 2024. It requests \$6552.00 in unpaid rent due on January 1, 2024. The Landlord affirms that this amount is for October, November, and December of 2023.

The Landlord affirms emailing the Notice to the Tenant on January 11, 2023, and the Tenant acknowledges receiving it by email that same day.

The Landlord affirms that rent for January and February of 2024 remains unpaid.

The Tenant affirms paying rent for all the months in question to the Landlord's agent. She provided copies of e-transfers for rent to the Landlord's agent as follows:

October 2023 (sent September 30, 2023)	\$2184.00
November 2023 (sent November 1, 2023)	\$2184.00
December 2023 (sent December 1, 2023)	\$2184.00
January 2024 (sent January 1, 2024)	\$2052.00
February 2024 (sent January 30, 2024)	\$1476.00

The Tenant affirms sending the agent the amount requested in the 10 Day Notice to as she was unsure if previous e-transfers had been accepted, and she wanted to avoid eviction. The Tenant provided supporting copies of e-transfers to the Landlord's agent as follows:

Sent January 12, 2024	\$2000.00
Sent January 13, 2024	\$2000.00
Sent January 14, 2024	\$500.00
Sent January 15, 2024	\$2500.00

The Tenant also affirms paying rent for January 2024 again as she was unsure if previous e-transfers had been accepted. The Tenant provided supporting copies of e-transfers to the Landlord's agent as follows:

Sent February 1, 2024	\$2000.00
Sent February 2, 2024	\$52.00

The Tenant further provided copies of e-transfers directly to the Landlord as follows:

February 2024 (sent January 30, 2024)	\$1476.00
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The Landlord confirms the Tenant tried to e-transfer her rent, but she was afraid to open the email. The Landlord affirms she wants rent cheques sent to the Landlord's address used on both the 10 Day Notice, and on Tenant's Dispute Notice.

Both parties agree that the Tenant, in the past, was to pay rent to the Landlord's agent.

However, the Landlord affirms she stopped using the agent in September 2023 and that the agent directed the Tenant to pay rent directly to the Landlord. She further affirms telling the Tenant on October 20, 2023, by Wechat, to not contact, nor pay rent to, the agent anymore.

The Tenant affirms receiving no direction from the Landlord's agent to stop paying rent to him; she further affirms receiving no direction from the Landlord to start paying rent directly to her.

The Landlord provided a copy of the tenancy agreement. The address for service of the Landlord is the address of the rental unit, but both parties agree that neither the Landlord, nor her agent, ever lived at the rental unit during the Tenant's tenancy. Furthermore, the Landlord confirms that the telephone numbers provided for the Landlord are, in fact, for the Landlord's agent.

The Tenant affirms that the Landlord never provided her with contact information, and she had no way of contacting the Landlord, including after September 2023, when the Landlord's agent allegedly stopped working with the Landlord.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The Landlord affirms that she directed her agent, upon his leaving her employ, to inform the Tenant that rent should be paid directly to the Landlord and not to the agent. She further affirms informing the Tenant of this herself on October 20, 2023.

The Tenant's affirmation that she did not receive any direction to pay rent to the Landlord and not her agent is supported by her continued and repeated rent payments to the Landlord's agent between October 2023 to February 2024.

In the absence of documentary evidence from the Landlord that she, or the agent, communicated to the Tenant to pay the Landlord directly, I find the Tenant's version of events, that she was never told to stop paying the agent, the more plausible version of events.

Analysis

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to 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).

I find that the 10 Day Notice was duly served to the Tenant on January 11, 2024, and that the Tenant had until January 16, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has not shown sufficient grounds to validate the 10 Day Notice and obtain an end to this tenancy.

I find her payments to the Landlord's agent to be a reasonable course of action, and I find paying rent to the agent, regardless of the actual nature of his relationship to the Landlord, sufficient to meet the requirements of section 26 (1) of the Act, "a tenant must pay rent when it is due under the tenancy agreement..."

Therefore, although her initial rent e-transfers for the months of October, November and December of 2023 may have expired, she sent e-transfers for rent for these months to the Landlord's agent again within 5 days of receiving the 10 Day Notice. Regardless of whether or not the Landlord's agent ultimately accepted these e-transfers, or they expired after the 30 day limit, the payments were made within 5 Days of the Tenant receiving the 10 Day Notice.

Therefore, the Tenant's application is granted 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.

The 10 Day Notice of January 1, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Is the landlord entitled to a Monetary Order for unpaid rent?

As the 10 Day Notice is cancelled and of no force or effect, the Landlord is not entitled to a Monetary Order for unpaid rent.

Is the tenant entitled to a Monetary Order for compensation for damage or loss under the Act?

Under Rule of Procedure 2.3 Arbitrators may use their discretion to dismiss unrelated claims. Therefore, I chose to sever this issue.

For the above reasons, the Tenant's application for a Monetary Order for compensation for damage or loss under 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 an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Under Rule of Procedure 2.3 Arbitrators may use their discretion to dismiss unrelated claims. Therefore, I chose to sever this issue.

For the above reasons, the Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement 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 an order for the landlord to make repairs to the rental unit?

Under Rule of Procedure 2.3 Arbitrators may use their discretion to dismiss unrelated claims. Therefore, I chose to sever this issue.

For the above reasons, the Tenant's application for the landlord to make repairs to the rental unit 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 Tennant 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.

Is the Landlord entitled to recover the filing fee for this application from the Tennant?

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The 10 Day Notice of January 1, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

I grant the Tenant a Monetary Order in the amount of **\$100.00** under the following terms:

Monetary Issue	Granted Amount
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$100.00

The Tenant may deduct \$100.00 from the rent for April 2024 as full satisfaction of this Monetary Order.

After receiving this decision, all rent payments shall be made by cheque or money order and shall be sent to the Landlord's address that was used on both the 10 Day Notice and on the Tenant's Notice of Dispute Resolution Proceeding.

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 11, 2024

Residential Tenancy Branch