

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's 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

This hearing also 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
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 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 for the Landlord to provide services or facilities required by law under section 27 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Tenant C.D. attended the hearing for the Tenant.

A.M. attended the hearing for the Landlord.

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

I find that the Landlord delivered the proceeding package on February 6, 2024, by registered mail in accordance with section 89(1) of the Act. I deem the Tenant to have been served February 11, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

I find that Landlord was not served with the Tenant's proceeding package. The Tenant confirmed that she did not serve the Landlord with her dispute proceeding package, explaining that she did not understand that she was required to do so in light of receiving a notice for the same dispute hearing from the Landlord.

## **Service of Evidence**

The Tenant did not provide any evidence to the Residential Tenancy Branch. The Tenant indicated that she did not serve any evidence to the Landlord.

I find that the Landlord delivered their evidence on February 6, 2024, by registered mail in accordance with section 89(1) of the Act. I deem the Tenant to have been served February 11, the fifth day after the registered mailing. The Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service.

## **Preliminary Matters**

I informed the parties at the outset that as I had determined that the Landlord had not been served with the Tenant's proceeding package, I was only going to hear the Landlord's application which was whether the Landlord was entitled to an Order of Possession and Monetary Order for unpaid rent pursuant to their 10 Day Notice for Unpaid Rent.

Consequently, the Tenants' claims, which are as follows, were dismissed with leave to reapply:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 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 to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 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 for the Landlord to provide services or facilities required by law under section 27 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The Tenant's application 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 is dismissed without leave to reapply as that Notice has already been cancelled in the context of this hearing.

## **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 recover the filing fee for this application from the Tenant?

## **Background and Evidence**

I have reviewed all evidence but will refer only to what I find relevant for my decision.

Evidence was provided showing a monthly rent of \$1,000.00. The due date is contested by the parties. The Landlord holds a security deposit in the amount of \$500.00.

A 10 Day Notice was attached to the Tenant's door on January 26, 2023, indicating that the Tenant failed to pay rent for February on January 25, 2024.

The Tenant disputed this notice on January 31, 2024.

The Tenant replied that rent for February was not due on January 25, 2024, but rather January 31, 2024, and referenced her tenancy agreement which indicates that rent will be paid on the 31<sup>st</sup> day of each month.

The Landlord responded that the parties had a verbal agreement that the Tenant would pay rent on the 25<sup>th</sup> day of each month.

The Tenant denied that there was a verbal agreement that the Tenant would pay rent on the 25<sup>th</sup> day of each month.

## **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.

### **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).

A 10 Day Notice was attached to the Tenant's door on January 26, 2024. I deem the notice to have been served January 29, 2024, three days later. As the Tenant disputed this notice on January 31, 2023, I find that the Tenant applied to dispute the 10 Day

Notice within the time frame allowed by section 49 of the Act. I find that the Landlord has the burden to prove that they have sufficient grounds to issue the 10 Day Notice.

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

The 10 Day Notice indicated that the grounds for ending the tenancy were that the Tenant had failed to pay February's rent when it was due on January 25, 2024.

The Tenant replied that rent for February was not due on January 25, 2024, but rather January 31, 2024, and referenced her tenancy agreement which indicates that rent will be paid on the 31<sup>st</sup> day of each month.

The Landlord responded that the parties had a verbal agreement that the Tenant would pay rent on the 25<sup>th</sup> day of each month.

The Tenant denied that there was a verbal agreement that the Tenant would pay rent on the 25<sup>th</sup> day of each month.

Turning to the tenancy agreement itself, I note that clause 1.2 reads as follows:

2) Any change or addition to this tenancy agreement **must be agreed to in writing** and initialed by both the Landlord and the Tenant. If a change is not agreed to in writing, is not initialed by both the Landlord and the Tenant or is unconscionable, it is not enforceable. (emphasis my own)

I find that under the terms of the tenancy agreement, the Tenant was required to pay rent on the 31<sup>st</sup> day of each month for the following month's rent. Consequently, I find that at the time that the 10 Day Notice was issued, rent was not yet due. For this reason, I find it that the Landlord has failed to establish that the purported grounds for ending the tenancy, unpaid rent, existed at the time that the Notice was issued.

I find that Notice was not valid.

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 25, 2023, 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 recover the filing fee for this application from the Tenant?**

As the Landlord was not successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

**Conclusion**

The Tenant's application is granted for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent under section 47 of the Act.

The 10 Day Notice of January 25, 2024, is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with 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: March 1, 2024

---

Residential Tenancy Branch