

## **DECISION**

### **Introduction**

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear linked applications.

The Tenant's November 28, 2022 Application for Dispute Resolution under the Act is for:

- Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- An order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The Landlord's December 5, 2022 Application for Dispute Resolution under the Act is for:

- An Order of Possession under a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) pursuant to sections 46 and 55;
- An authorization to recover the filing fee for this application, under section 72

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

The Landlord acknowledges service of the Proceeding Package and is duly served in accordance with the Act.

The Tenant acknowledges service of the Proceeding Package and is 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.

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

## **Preliminary Matters**

### *Severed claim from Tenant's application – order for Landlord to comply with the Act*

The Tenants application includes a secondary claim regarding an order for the Landlord to comply with the Act, under section 62. Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated.

I find that the primary issue in both applications is the notice to end tenancy for unpaid rent and whether the tenancy will continue. The Tenant's claim under section 62 is not sufficiently related to unpaid rent and has not been adjudicated. The Tenant may reapply for this claim.

## **Issues to be Decided**

Is the Landlord entitled to an Order of Possession based the 10 Day Notice? If not, is the 10 Day Notice cancelled?

Is the Landlord entitled to recover the filing fee for their application from the Tenant?

## **Background and Evidence**

Both parties agree that this tenancy started on October 18, 2013. The tenancy agreement is in evidence. Under term 4 "Security Deposit", \$318.00 security deposit is recorded as half of the Average Market Rent (AMR). If the value of the security deposit is relied on, the AMR was \$638.00 when the Tenant entered into the agreement. Under term 5 "Rent", there is no amount recorded. The term states the Tenant agrees the rent for the unit is the AMR, as set out in the rent subsidy calculation. There is no attachment to the agreement, thus the tenancy agreement does not include the amount of monthly rent for the rental unit.

The rent subsidy calculation provided in evidence is dated May 13, 2022. It records a subsidy of \$222.00 and the Tenant's contribution as \$546.00. It can be deduced that the AMR at that time was \$768.00. The parties agreed that prior to the Landlord trying to end the tenancy for unpaid rent, the Tenant's monthly rent was \$546.00.

In the late summer of 2022, the Tenant started to attend college and was no longer eligible for a rent subsidy. Both parties confirmed the following accumulation of unpaid rent:

August 2022 - \$85.00 owing

September 2022 - \$170.00 owing

October 2022 - \$716.00 owing

November 2022 - \$1,262.00 owing

The Landlord issued a 10 Day Notice to end tenancy for \$1,262.00 in accumulated unpaid rent due on November 1, 2022. The Notice was signed November 9, 2022, with an effective date of November 24, 2022. The Tenant received the Notice on November 14, 2022, and did not dispute it until November 28, 2022.

The Tenant testified they were waiting for their student financial assistance payment to arrive so they could pay the full arrears. In response to the Notice, they negotiated with an agent of the Landlord, who assured them that if the Tenant paid on December 8, 2022, when the Tenant was expecting to receive their student loan funds, they would not be evicted. The Tenant states that they relied on this assurance up until November 28, 2022, the date that they filed the dispute – as this was when the Tenant alleges that they discovered the Landlord's intent to proceed with the eviction. This is the Tenant's reason for not filing their dispute within the required five days to avoid the conclusive presumption that they have accepted the end of the tenancy as described in section 46(5) of the Act.

The Landlord disagrees with the Tenant's characterization of the 10 Day Notice as a formality. The Landlord acknowledged that there was an agreement that the Tenant would avoid eviction if they paid the arrears by December 8, 2022. The Tenant did not pay the arrears until December 14, 2022. As of the date of this hearing, the Tenant is up to date with their rent payments.

## **Analysis**

*Is the Landlord entitled to an Order of Possession based the 10 Day Notice? If not, is the 10 Day Notice cancelled?*

In case the Landlord is not aware, in 2022 the BC Court of Appeal explained in *Ryan v. Mole Hill Community Housing Society*, that tenancy agreements should record the amount of rent payable without a subsidy so that the tenant knows what rent they are agreeing to pay should their income change.

The Landlord confirmed the Tenant was assured that they would not be evicted if they paid the rent by December 8, 2022. This is well beyond the effective date of the 10 Day Notice, which was November 24, 2022.

I find that the Landlord effectively canceled the Notice by entering into an agreement with the Tenant to pay arrears after the effective date of the Notice. Having given the Tenant a new due date for the rent, the Notice can no longer be relied upon by the Landlord to end this tenancy.

I exercise the authority delegated to me under section 62(2) of the Act and set aside the November 9, 2022 Notice.

*Is the Landlord entitled to recover the filing fee for their application from the Tenant?*

As the Landlord was unsuccessful in their application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

## **Conclusion**

The 10 Day Notice dated November 9, 2022, is cancelled. This tenancy continues until it is ended in accordance with the Act.

The Landlord's application to recover their filing fee from the Tenant is dismissed, without leave to reapply.

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: April 5, 2024

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Residential Tenancy Branch