# DECISION

## Introduction

The Tenants filed two separate applications, both of which claim the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy for Unpaid Rent signed April 10, 2024 (the "10 Day Notice");
- an order pursuant ss. 32 and 62 for repairs to the rental unit.

A.P. and D.L. attended as the Tenants. B.K. attended as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

## Preliminary Issue – Duplicate Applications

At the outset of the hearing, I sought submissions from the Tenants on why they filed two applications claiming the same relief. The Tenant A.P. advised that there were some issues when they filed the first application, thereby prompting them to file the second. The Tenant acknowledged this was an error.

Since the two applications are the same based on what I was told by the Tenants, I dismiss the application filed second on the basis that it was an error on the part of the Tenants.

## Service of the Application and Evidence

The Tenant A.P. advised having served their applications on the Landlord, with the Landlord, referring to the file number, acknowledging receipt of the first application filed by the Tenants. Accepting this, I find under s. 71(2) of the *Act* that the Landlord was sufficiently served with the Tenant's first application.

The Tenant A.P. advises that the Landlord was served with all the evidence they have provided to the Residential Tenancy Branch. The Landlord denies receipt of the Tenant's evidence, except for a receipt dated March 28, 2024, a photo of stairs at the residential property, and a photo of a hot tub at the residential property.

The Tenant A.P. indicates that she sent her evidence in a registered mail package sent to the Landlord on April 23, 2024. I enquired with the Tenants whether they had a tracking number for the registered mail. The Tenant advised that they did not have it with them, nor was one provided to the Residential Tenancy Branch prior to the hearing.

I am unable to find that the Tenants' evidence was served on the Landlord. The Tenants indicate that they sent it via registered mail but failed to provide proof of having done so. The Landlord has provided a clear denial, absent three pages. I note one of which, the receipt of March 28, 2024, was not provided by the Tenants themselves in their evidence.

For the reasons set out below, the question of repairs is not relevant to this matter. In light of this, I find that none of the evidence is relevant and the receipt of March 28, 2024 was not provided by the Tenants themselves. On this basis, I find it would be procedurally unfair to include or consider any evidence provided by the Tenants as the Landlord was not given notice of this prior to the hearing and what was received is irrelevant to the primary issue in dispute. As such, the Tenants' evidence is excluded.

The Landlord advises that she delivered her evidence to the Tenants' door on April 29, 2024. The Tenant A.P. says that the Landlord did attend with her evidence but did not leave it at the door and took it with her when she left.

I enquired with the Landlord on whether she has provided proof that her evidence was served as alleged. The Landlord says that she attended the rental unit with a witness but admits that no statement from the witness has been provided to the Residential Tenancy Branch.

Since the Landlord has failed to provide proof of service of her evidence, I am unable to find that it was served on the Tenants by leaving it at the rental unit door, which would have complied with s. 88 of the *Act* if it could have been confirmed. As such, I exclude the Landlord's evidence on the basis that I cannot confirm service and it would be procedurally unfair to review or consider evidence for which the Tenants have not received notice.

Given the issues with service, I noted at the hearing that both parties likely have copies of the tenancy agreement and 10 Day Notice. I proposed including these documents as they were both likely in the parties' possession irrespective of issues with service. The parties consented to doing so. As a result of this, I include and consider the copies of the 10 Day Notice and tenancy agreement that have been provided to me by the parties.

## Preliminary Issue – Severing the Tenants' Claim for Repairs

Rule 2.3 of the Rules of Procedure requires claims in an application to be related to one another. Where claims are not sufficiently related, the arbitrator hearing the matter may dismiss unrelated claims, either with or without leave to reapply.

Hearings before the Residential Tenancy Branch are generally scheduled for one hour. Rule 2.3 of the Rules of Procedure is intended to ensure that matters are dealt with in a timely and efficient manner. This rule also enables parties to focus their submissions on a limited number of issues in dispute given the summary nature of hearings before the Residential Tenancy Branch.

In this instance, the primary issue in dispute will be whether the 10 Day Notice is enforceable or not. Indeed, should the 10 Day Notice be upheld, the issue of repairs would be moot as the tenancy would be over.

I find that the issue of repairs is not sufficiently related to whether the 10 Day Notice is enforceable. Given this, I dismiss the claim. Should the tenancy continue, it will be dismissed with leave to reapply. If the tenancy ends based on the 10 Day Notice, it will be dismissed without leave to reapply.

The hearing proceeded strictly on the question of the 10 Day Notice.

## Preliminary Issue – Amending the Address for the Rental Unit

I noted that the address for the rental unit in both applications was different. The Tenant A.P. testified that she was unaware of the rental unit's address, with the Landlord confirming the unit number for it. I note that the tenancy agreement does not list the rental unit's number, just the address number for the residential property.

Accepting that this was likely an error, and that the Landlord likely knows the rental unit's number, I have amended the Tenants' application to reflect the address as confirmed by the Landlord at the hearing.

## Issues in Dispute

1) Should the 10 Day Notice be cancelled? If not, is the Landlord entitled to an order of possession and order for unpaid rent?

## Evidence and Analysis

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

### *General Background*

The parties confirm the following details with respect to the tenancy:

- The Tenants moved into the rental unit on March 1, 2024.
- Rent of $2,500.00 is due on the first day of each month.
- A security deposit of $1,250.00 was paid by the Tenants.

I have been provided a copy of the tenancy agreement and addendum.

***1) Should the 10 Day Notice be cancelled? If not, is the Landlord entitled to an order of possession and order for unpaid rent?***

A landlord may end a tenancy under s. 46(1) of the *Act* when a tenant fails to pay rent when it is due under the tenancy agreement by serving a notice to end tenancy on the tenant that is effective no sooner than 10-days after it is received.

Under s. 46(4) of the *Act*, a tenant, upon receipt of a notice to end tenancy issued under s. 46 of the *Act*, has 5-days to either pay the overdue rent listed in the notice or file an application to dispute the notice. When a tenant files to dispute a notice to end tenancy issued under s. 46 of the *Act*, the onus for proving that the notice was properly issued rests with the respondent landlord.

*Service of the 10 Day Notice and Form and Content*

The Landlord advises that the 10 Day Notice was posted to the Tenants' door on April 1, 2024. The Tenant A.P. acknowledges it was received on April 1, 2024. Accepting this, I find that the 10 Day Notice was served in accordance with s. 88 of the *Act* and received on April 1, 2024.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Tenants filed their application disputing the 10 Day Notice on April 6, 2024. Accordingly, I find that they filed to dispute the notice within 5 days of receiving it in compliance with the deadline imposed by s. 46(4) of the *Act*.

As per s. 46(2) of the *Act*, all notices issued under s. 46 must comply with the form and content requirements set by s. 52 of the *Act*. I have reviewed the 10 Day Notice. I find that it complies with the formal requirements of s. 52 of the *Act*. It is signed by the Landlord, states the address for the rental unit, sets out the grounds for ending the tenancy, and is in the approved form (RTB-33).

I note that the 10 Day Notice is dated April 10, 2024, which is obviously an error as it was served on April 1, 2024. Though this technically runs afoul s. 52(a) of the *Act*, I find that it is reasonable to amend this under s. 68(1) of the *Act* as the Tenant clearly knew the date was wrong given when she received the notice. I accept that this was a typographical error that does not affect the relevant aspects of the notice, such that it is reasonable in all circumstances to correct the issue to reflect it was signed on April 1, 2024.

I further note that the effective date of April 10, 2024 is incorrect. I do not find, however, that this is an issue as the effective date is automatically corrected to April 11, 2024 by application of s. 53 of the *Act*.

*Basis for Issuing the 10 Day Notice*

The Landlord advises that she sent a text message to the Tenants prior to April 1, 2024 in which she enquired on payment of rent. The Landlord says that she was told by the Tenants that the Tenant D.L. was in hospital and that they would have issues in delivering rent. The Landlord says that she arranged to retrieve rent from the Tenants at the hospital, but that the Tenants were not there and did not respond to her messages.

The Landlord testified that after leaving the hospital, she was told by the Tenants that the rent cheque was at the rental unit with the Tenant A.P.'s sister. The Landlord says she went to the rental unit on the morning of April 1, 2024 but that no one was there. The Landlord says that she then messaged the Tenants to say that if they did not pay rent by that afternoon, she would deliver a notice to end tenancy.

The Tenant A.P. acknowledges some messages between with the Landlord, though denies that she said she had rent available for pick up at the hospital. The Tenant A.P. testified that the rent cheque was with her sister at the rental unit, but that her sister had to leave. I am told by the Tenants that a rent cheque of $4,000.00 was delivered to the Landlord's address for service as listed in the 10 Day Notice by a social worker.

The Landlord denies receipt of any rent cheque. The Landlord further testified that she spoke with K.R., a social worker working at the organization assisting the Tenants, about the possibility of rent being paid as alleged by the Tenants. The Landlord tells me that she was told by K.R. that the agency in question did not issue a cheque to the Landlord and that the amount of $4,000.00 does not make sense given that rent is due in the amount of $2,500.00.

The Tenant A.P. emphasized that a $4,000.00 cheque for rent was left at the Landlord's porch on April 1, 2024 by the social worker, saying that the amount was for $2,500.00 for rent, $650.00 for the utilities listed in the 10 Day Notice, and $850.00 to be credited for next month's rent.

Based on the testimony provided to me, I find that the Landlord has established that she was not paid rent in April 2024. The Tenants' story that a $4,000.00 rent cheque was left on the porch at the residential property lacks credibility. It makes little sense that an unnamed social worker would deliver a cheque for that amount, which does not correspond to rent owed under the tenancy agreement nor the arrears for rent and utilities in the 10 Day Notice, and simply leave it unsecured on the porch.

I accept that the Landlord spoke with a K.R. as advised at the hearing. I find it likely that the agency in question would not issue a cheque on future rent obligations as alleged by the Tenant. I accept given the totality of the testimony, that no rent cheque had ever been issued to or received by the Landlord for April's rent.

I find that the Landlord has established that rent was not paid on April 1, 2024 as required under the tenancy agreement. The 10 Day Notice was properly issued.

There is also mention of utilities in the 10 Day Notice. Under s. 46(6) of the *Act*, unpaid utilities may only be treated as unpaid rent when the tenancy agreement requires a tenant to pay the utility in question and the tenant has failed to pay the amount more than 30 days after being given a written demand for payment.

First, I have been provided no written demand for payment of the utilities, such that I cannot find the unpaid utilities are "unpaid rent" within the meaning of s. 46(6) of the *Act*. I note that the tenancy started a month prior to the 10 Day Notice. In other words, it would be impossible to comply with the 30-day minimum time for payment set by s. 46(6) of the *Act*.

Second, I am told by the Landlord that the utilities are in the name of the neighbouring rental unit's occupant, with the Tenants to pay two-thirds of the bills. I have significant concerns on this arrangement, as there is a question of unconscionability of imposing an obligation for the neighbouring tenant to pay utilities that are mostly attributable to the Tenants. Further, the Landlord is essentially offloading the obligation to give notice of a utility demand, as required under s. 46(6) of the *Act*, to the neighbouring tenant.

Third, I have not been provided with utility statements confirming the amount listed in the 10 Day Notice for unpaid utilities, being $650.00. Though I make no findings on the question of the total amount owed by the Tenants, if any, I certainly question how utility usage could be so high for a month's worth of utilities given the tenancy started on March 1, 2024.

I make no findings on the unpaid utilities only to note that I do not uphold the 10 Day Notice since any unpaid utilities as it could not have complied with the demand process contemplated by s. 46(6) of the *Act*.

Despite this, I have accepted rent for April 2024 was unpaid as set out in the 10 Day Notice. Given this, I dismiss the Tenants' claim to cancel the 10 Day Notice, without leave to reapply.

*Order of Possession*

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession.

As that is the case here, I grant the Landlord an order of possession. I note that the Tenants have not paid rent for two months but have small children and D.L. has recently dealt with serious health issues. Having regard to the considerations set out under Policy Guideline #54, I make the order of possession effective **7 days** after it is received by the Tenants.

*Order for Unpaid Rent*

Section 55(1.1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then I must grant an order for unpaid rent.

The Tenants suggested that their social worker again delivered a rent cheque to the Landlord's porch on or about May 1, 2024. As noted above, I find the Tenants to lack credibility in their narrative that a rent cheque was left at the Landlord's porch by a social worker. I would add that since the Tenants were served with the 10 Day Notice in which rent for April 2024 was at issue, I find it highly unlikely that a social worker would, again, attempt payment of rent by leaving a cheque on the Landlord's porch on May 1st.

I find that the Landlord has demonstrated rent for April 2024 and May 2024. I grant her an order for unpaid rent in the amount of $5,000.00 ($2,500.00 x 2). I do not include any utilities in this order as it is not unpaid rent within the meaning of s. 46(6) of the *Act*.

I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord retain the security deposit and interest, totalling $1,256.18, in partial satisfaction of the amount owed to her from the Tenants. Interest in this instance totals $6.18 based on the following calculation from the Residential Tenancy Branch's deposit interest calculator:

2024 $1250.00: $6.18 interest owing (2.7% rate for 18.31% of year)

In total, I order that the Tenants pay **$3,743.82** to the Landlord in unpaid rent for April and May 2024 ($5,000.00 - $1,256.18).

## Conclusion

I dismiss the Tenants' claim to cancel the 10 Day Notice, without leave to reapply.

I grant the Landlord an order of possession under s. 55(1) of the *Act*. The Tenants and any occupants shall deliver vacant possession of the rental unit to the Landlord within **seven (7) days** of receiving the order of possession.

I grant the Landlord an order for unpaid rent under s. 55(1.1) of the *Act*. In total, I order that the Tenants pay **$3,743.82** to the Landlord, representing unpaid rent for April and May 2024 less the security deposit and interest to be retained by the Landlord.

As the tenancy is over, the Tenants' claim under ss. 32 and 62 of the *Act* for repairs to the rental unit is moot. This claim severed at the outset is dismissed without leave to reapply.

It is the Landlord's obligation to serve the order of possession and monetary order on the Tenants. Should the Tenants fail to comply with the order of possession, it may be

enforced by the Landlord at the BC Supreme Court. Should the Tenants fail to comply with the monetary order, it may be enforced by the Landlord at the BC Provincial 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: May 6, 2024

Residential Tenancy Branch