

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
- an order to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The hearing also 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

Landlord MD and his wife KD attended the hearing.

No one attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that neither Notice of Dispute Resolution was served in accordance with the Act.

MD testified that he did not serve any papers to the Tenants after serving two 10 Day Notices. I therefore find that the Landlord's Notice of Dispute Resolution was not served.

MD also testified that he only became aware of the Tenants' application when he received an email from the RTB. He testified he did not receive any documents from the Tenants. I therefore find that the Tenants' Notice of Dispute Resolution was not served.

Preliminary Matters

This hearing began via Conference Call at 11:00 AM, with the Landlord MD attending. The respondent Tenant did not attend although the conference call was left open for the duration of the hearing, approximately 35 minutes.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

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 Tenant entitled to an order setting conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

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

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

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 Landlord provided a copy of the first two pages of a 10 Day Notice dated May 20th, 2024 in evidence.

Analysis

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

Although the Tenants did not serve the Notice of Dispute Resolution, the Landlord should not be deprived of an opportunity to enforce his 10 Day Notice because the Tenants failed to properly serve him.

I have examined the 10 Day Notice, dated May 20th, 2024. Firstly, I note that the address of the rental unit is not given. This, however, the Tenants undoubtedly knew, and so the Notice may be amended under subsection 68(1) of the Act.

Secondly, and more importantly, the Notice cites, in addition to \$300 in rent, \$160 in utilities, written demand for which was given on the same day as the Notice, May 20th, 2024.

Even presuming the Landlord made a proper written demand for such utilities, under subsection 46(6) of the Act, a landlord may only claim an amount for utilities on a 10 Day Notice if the landlord gives written notice for payment 30 days prior to the issuance of the Notice and the amount remains unpaid.

As the Notice claimed an amount that the Landlord was not entitled to claim on the Notice, I find that the Notice was issued in contravention of section 46 of the Act and does not comply with sections 52(d) and 52(e) of the Act.

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.

Therefore, the Tenant's application is for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent under sections 46 and 55 of the Act is granted.

The 10 Day Notice of May 20th, 2024 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Is the Tenant entitled to an order setting conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?

As the Tenant's application was not served under the Act, these claims must be dismissed, with leave to reapply.

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

As I have found that the Notice of Dispute Resolution was not served in accordance with the Act, the Landlord's application must be dismissed.

For the above reasons, the Landlord's application for a Monetary Order for unpaid rent under section 67 of 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 Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was not successful in this 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 Tenants' application is granted for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent under section 46 of the Act.

The 10 Day Notice of May 20th, 2024 is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

The Tenants' application for an order setting conditions on the Landlord's right to enter the rental unit is dismissed, with leave to reapply.

The Tenants' application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement is dismissed, with leave to reapply.

The Landlord's application for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent is dismissed, without leave to reapply.

The Landlord's application for a Monetary Order for unpaid rent is dismissed, with 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: July 25, 2024