

## **DECISION**

### **Introduction**

This hearing dealt with an application filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the “Act”):

The Landlord applied for:

- an Order of Possession based on unpaid rent 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

The Tenant applied 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
- 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
- authorization to change the locks to the rental unit under section 70(2) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

GM attended the hearing as agent for the Landlord.

AB attended the hearing for the Tenant.

### **Preliminary Matters**

At the outset of the hearing, GM corrected the spelling of the Landlord's first name. Based on section 64(3)(a) of the Act, I have amended the Tenant's application to include the correct spelling of the Landlord's first name.

The following issues are dismissed with leave to reapply:

- 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
- authorization to change the locks to the rental unit under section 70(2) of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

*Residential Tenancy Branch Rules of Procedure*, Rule 6.2, states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss these issues identified in the Tenant's application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

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

The Tenant testified that they served the Landlord with their Proceeding Package containing all of their evidence by registered mail on July 17, 2024, to the address provided to them as the Landlord's address for service. In support of this, the Tenant submitted a copy of the customer receipt containing a Canada Post tracking number.

GM testified that the Landlord did not receive the Tenant's Proceeding Package by registered mail but confirmed the address for service of the Landlord. GM provided no reason as to why the Landlord did not receive the Tenant's Proceeding Package.

Based on the testimony and evidence of the Tenant, I deem the Landlord served with the Tenant's Proceeding Package. Based on section 90 of the Act a document served in accordance with section 89 of the Act is deemed to be received if sent by registered mail on the fifth day after it is mailed. In this case, the Landlord is deemed to have received the Tenant's Proceeding Package on July 22, 2024, in accordance with section 90(a) of the Act.

GM testified that the Landlord served the Tenant with their Proceeding Package on August 4, 2024, by registered mail to the address of the rental unit. GM further testified

that the Landlord also served the Tenant with their Proceeding Package in two separate emails on August 5, 2024, and August 6, 2024. The Landlord submitted copies of the emails into evidence. The Landlord provided a customer receipt containing a Canada Post tracking number and copies of emails to confirm this service. GM testified that based on the ongoing dispute between the Tenant and Landlord, service of the Landlord's Proceeding Package to the Tenant was delayed.

The Tenant testified that they did not receive the Proceeding Package sent to them by registered mail to the rental unit on August 4, 2024, as they vacated the rental unit on August 2, 2024. The Tenant testified that they have not received any emails regarding this dispute from the Landlord.

Rule of Procedure 3.1 requires that the applicant, in this case, the Tenant, must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch serve the respondent with the Proceeding Package. Further Rule of Procedure 3.14 requires that evidence upon which the applicant intends to rely at the hearing must be received by the respondent, not less than 14 days before the hearing.

In this case, I find that the Landlord has not met the requirements of Rule of Procedure 3.1 or 3.14 and for that reason, I find it would not be procedurally fair for me to consider their application or evidence. On that basis, I dismiss the Landlord's Application for Dispute Resolution in its entirety as set out in the conclusion section of this decision.

## **Issues to be Decided**

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession and/or an Monetary Order for unpaid rent?

## **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 parties confirmed that this tenancy began on March 1, 2024. The Tenant testified that monthly rent was \$1,450.00, due on the first day of the month. The Landlord testified that monthly rent was \$1,600.00 due on the first day of the month; however, the Tenant was unable to pay this amount, so the Landlord authorized a temporary reduction in rent to \$1,450.00 until the Tenant was able to pay rent in full. The parties agreed that the Landlord collected a security deposit in the amount of \$800.00.

The Tenant acknowledged receipt of the 10-Day Notice. The Tenant submitted a copy of the 10-Day Notice into evidence.

The Tenant testified that they vacated the rental unit on August 2, 2024, and have no intention of returning to the rental unit. GM testified that they were not notified that the Tenant vacated the rental unit until the hearing. GM maintained that the Landlord is seeking an Order of Possession.

GM testified that the Tenant failed to pay rent in the amount of \$4,050.00. GM testified that the Tenant owes rent in the amount of \$1,150.00 for the month of June, \$1,450.00 for the month of July and \$1,450.00 for the month of August.

The Tenant disputes that any rent is outstanding and submitted that they paid rent by way of e-transfer, cash and by completing work on the Landlord's truck.

## **Analysis**

Based on the Tenant's testimony that they vacated the rental unit on August 2, 2024, and have no intention of returning to the rental unit, I find that this tenancy ended on August 2, 2024, based on section 44(1)(d) of the Act. For that reason, I find the Tenant's application for cancellation of the Landlord's 10 Day Notice and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act is no longer applicable to their circumstances because the tenancy is over.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the tenants' application to cancel the 10-Day Notice without leave to reapply.

Section 55 (1) of the Act states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Tenant submitted a copy of the 10-Day Notice into evidence. On its face, the 10-Day Notice meets the form and content requirements of section 52 of the Act. However, as I have previously determined that this tenancy ended on August 2, 2024, based on section 44(1)(d) of the Act, I decline to grant an Order of Possession as it is not necessary.

Section 55 (1.1) states that if an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], the 10-Day Notice complies with section 52 of the Act, and the director dismisses the tenant's application or upholds the notice, the director must grant an order requiring the payment of the unpaid rent.

However, I interpret this section to mean that the director must be satisfied that rent is outstanding. The onus is on the Landlord to prove that rent is outstanding and in what amount. In this case, the Landlord has not provided sufficient evidence, such as e-transfer statements, payment receipts or a tenant ledger to support their assertion that rent is outstanding in the of amount \$4,050.00. On that basis, I decline to grant a Monetary Order in favour of the Landlord.

As stated below, the Landlord is granted leave to reapply for a Monetary Order for unpaid rent.

## **Conclusion**

The Landlord's application for an Order of Possession based on unpaid rent under sections 46 and 55 of the Act is dismissed without leave to reapply.

The Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed with leave to reapply.

The Landlord's application for authorization to recover the filing fee for this application from the tenant under to section 72 of the Act is dismissed without leave to reapply.

The Tenant's application 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 is dismissed without leave to reapply.

The Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed with leave to reapply.

The Tenant's application for 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 is dismissed with leave to reapply.

The Tenant's application for authorization to change the locks to the rental unit under section 70(2) of the Act is dismissed with leave to reapply.

The Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act 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: August 14, 2024

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Residential Tenancy Branch