

## **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) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act

The Landlord filed a cross-application under the Act for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 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

### **Service of Notice of Dispute Resolution Proceeding**

Both parties attended at the appointed time set for the hearing and had a full opportunity to provide affirmed testimony, present evidence, and make submissions.

Neither party disputed receipt of the other party's Proceeding Package. I find that the parties were duly served with the required materials in accordance with sections 89 and 90 of the Act.

### **Issues to be Decided**

Does the 10 Day Notice end the tenancy?

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

### **Background and Evidence**

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the Landlord and the Tenant on January 23, 2020, indicating a monthly rent of \$1,380.00, due on the first day of each month for a tenancy commencing on February 1, 2020
- A copy of a rental adjustment letter dated October 25, 2023, showing the rent being increased to the monthly rent amount of \$1,465.00
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated July 8, 2024, for \$1,485.00 in unpaid rent. The 10 Day Notice provides that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of July 18, 2024
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent by registered mail to the Tenant's address at 2:53 pm on July 8, 2024
- A copy of the Canada Post Customer Receipts containing the tracking numbers to confirm this service
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy
- A copy of a receipt dated July 19, 2024, for \$1,480.00 of rent, paid by the Tenant, which the Landlord has indicated is "for use and occupancy only"

The Tenant testified that they were unaware that rent had not gone through for July 1, 2024. The Tenant says the rent was NSF because of the July 1, 2024, holiday.

The Tenant testifies that they did not receive a delivery or a notice of attempted delivery from Canada Post for the 10 Day Notice. The tracking report for the registered mail indicates the 10 Day Notice was not picked up by the Tenant.

The Tenant says they first became aware that rent was owing for July 2024, when the Landlord phoned them on July 19, 2024. The Tenant says they requested and received a copy of the 10 Day Notice on July 19, 2024. It is not disputed that the Tenant paid rent immediately thereafter.

The Tenant disputed the 10 Day Notice on July 19, 2024.

## **Analysis**

### **Does the 10 Day Notice end the tenancy?**

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 does 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) of the Act.

The Landlord relies on section 90 of the Act that the Tenant is deemed to have received the 10 Day Notice on July 13, 2024, five days after it was sent by registered mail.

The Tenant testifies that they did not receive the 10 Day Notice until July 19, 2024.

Residential Tenancy Branch Policy Guideline 12 on service says deeming presumptions can be rebutted if fairness requires that that be done (*Atchison v. British Columbia*, [2008] B.C.J. No. 1448.). A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received. The Arbitrator may decide whether the document has been sufficiently served, and the date on which it was served based on all the evidence before them.

On a balance of probabilities, I am satisfied that the Tenant did not receive a notice of attempted delivery from Canada Post on July 9, 2024. I find the Tenant did not avoid service of registered mail based on the Tenant's testimony that they reside in a townhouse complex, they were home all day on July 9, 2024, and no one came to their door on that day when Canada Post indicated they left a notice. Given that the Tenant paid rent immediately on July 19, 2024, once they were notified that it was owing, I accept their testimony that they were not aware that rent for July was unpaid until July 19, 2024.

I find the Tenant has provided sufficient evidence and testimony to rebut deemed service of the 10 Day Notice.

I find the Tenant received the 10 Day Notice on July 19, 2024. I find the Tenant paid the full amount indicated on the 10 Day Notice and disputed the 10 Day Notice on July 19, 2024, within five days as required under section 46 of the Act.

Since I have found the 10 Day Notice was served on July 19, 2024, I find the Tenant does not require an extension of the time limit to dispute the 10 Day Notice under section 66 of the Act.

The 10 Day Notice issued July 8, 2024, is cancelled and of no force. This tenancy continues until ended in accordance with the Act.

The Landlord's application for an order of possession based on the 10 Day Notice issued July 8, 2024, is dismissed without leave to reapply.

**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 decline to award the \$100.00 filing fee paid for this application under section 72 of the Act.

## **Conclusion**

I grant the Tenant's application to cancel the 10 Day Notice under section 46 of the Act.

The 10 Day Notice issued July 8, 2024, is cancelled and of no force.

This tenancy continues until ended in accordance with the Act.

I dismiss the Landlord's application in its entirety 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: August 20, 2024

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Residential Tenancy Branch