

## **DECISION**

### **Introduction**

This hearing dealt with Applications for Dispute Resolution from both the Landlord and the Tenant under the *Residential Tenancy Act* (the "Act").

The Tenant's Application for Dispute Resolution, filed on July 8, 2024, is for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 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 regarding the Tenant's dispute of a rent increase by the Landlord under section 41 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
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord's Application for Dispute Resolution, filed on July 30, 2024, is for:

- an order to end the tenancy for cause pursuant to section 47 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Tenant M.I.A.M., Witness M.M. attended the hearing for the Tenant

Landlord G.S.A., Witness S.S., Witness A.C., attended the hearing for the Landlord

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

The Landlord's Witness A.C. testified that he sent the Landlords' Proceeding Package to the Tenant by registered mail on August 3, 2024, and supplied the Canada Post receipt and Tracking Number. The Landlords provided a Proof of Service document to corroborate this. The Tenant testified that he did not receive the Landlords' Proceeding Package and did not get a notice that there was a package to pick up. Residential Tenancy Branch Policy Guideline 12 states that where a record that is served by

registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I find that is Tenant deemed served with the Landlords' Proceeding Package, in accordance with section 90 of the Act, on August 8, 2024, by registered mail in accordance with section 89(1) of the Act, the fifth day after the registered mailing.

I find that the Landlords acknowledged service of the Tenant's Proceeding Package and are duly served in accordance with the Act.

### **Issues to be Decided**

Should the Landlords' One Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Tenant entitled to an order regarding the Tenant's dispute of a rent increase by the Landlord?

Is the Tenant entitled to an order to suspend or set conditions on the Landlords' right to enter the rental unit?

Is the Tenant entitled to an order requiring the Landlords to comply with the Act, regulation or tenancy agreement?

Is either party entitled to authorization to recover the filing fee for this application from the other?

### **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 G.S.A. testified that this tenancy began some time in 2019, and the current rent is \$1,000.00 per month due on the first day of the month.

The Tenant testified that the tenancy started in August 2018, the current rate of rent is \$1,400.00. The security deposit was \$1,000.00

The Tenant's application is for cancellation of a One Month Notice to End Tenancy for Cause issued on July 1, 2024, with an effective date of August 1, 2024 (the "One Month Notice") wherein the Landlords claim that the Tenants were repeatedly late paying rent as they had not paid rent from April 15, 2024, to July 18, 2024. The Landlords are asking for an Order of Possession based on this One Month Notice.

The Tenant's application, in summary, also requests compensation from the Landlords for because the Landlords have harassed him, an order regarding the rate of rent, and an order to limit the Landlords from entering the rental unit and harassing the Tenant.

The Landlord G.S.A. testified that the Tenant did not pay rent in April 2024 and told G.S.A. that he was unemployed. G.S.A. testified that, despite the Landlords' repeated requests, the Tenant has not paid rent in May, June, July, or August 2024.

The Landlords' Witness S.S. testified that she overheard a conversation between G.S.A. and the Tenant in which the Tenant confirms he is unemployed. S.S. stated that the G.S.A. told her that the Tenant had not paid rent, and the Tenant told her that he had paid rent.

The Landlords' Witness A.C. testified that he is the son in law of the Landlords and helps out the Landlords. A.C. witnessed the Tenant tell G.S.A. that the Tenant was unemployed and needed time to pay the rent. A.C. also witnessed the Landlord K.K.A. call the Tenant on speakerphone in May 2024 and ask for rent. The Tenant said that he still did not have a job.

The Tenant testified that he always paid rent in cash and the Landlords never gave him a receipt. At the start of the tenancy rent was \$1,000.00 but after six months, the Landlords raised the rent to \$1,400.00. The Tenant testified that he has paid \$1,400.00 rent to the Landlord every month.

The Tenant testified that the Landlords harasses him frequently. The Tenant, Landlord, and Landlords' Witness A.C. testified about an altercation between the parties and the RCMP were called. The testimonies were inconsistent with each other. No criminal charges were laid on any party.

The Tenant's Witness M.M. testified that he had seen the Tenant pay rent in cash frequently. M.M. was present when the Landlord served the One Month Notice to the Tenant. M.M. stated that the Tenant had paid the rent. M.M. has seen the Tenant take cash out from the bank and give it to the Landlords, he was not sure the amount of money, or the exact date.

## **Analysis**

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The Landlords and Tenant do not have a signed tenancy agreement, and each testified that rent is a different amount. The parties provided no documentary evidence to establish what rate of rent was paid in the past. The parties also did not provide any

evidence of the history of rent payment, such as receipts, an account ledger, or bank statements.

The Landlords and the Tenant each supplied witnesses who testified to opposing facts. The witnesses were equally vague in their testimonies, and their observations were limited.

Rule of Procedure 6.6 states, “the onus to prove their case is on the person making the claim and on a balance of probabilities which means that it is more likely than not the facts occurred as claimed.” I find that, on a balance of probabilities, the Landlords have failed to prove the details of the tenancy, and I find the Notice issued on July 1, 2024, is cancelled and of no force or effect.

Therefore, I dismiss the Landlords’ claims without leave to reapply.

I find the Tenant’s testimony to be inconsistent and not supported by evidence. I find that the Tenant has failed to meet their burden as described in Policy Guideline #16 and I find the Tenant’s application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement Act is dismissed, without leave to reapply.

As I have found the Tenant’s testimony to be inconsistent and not supported by evidence, I find that, on a balance of probabilities, the Tenant has failed to prove the details of any rent increases during the tenancy. the Tenant’s application for an order regarding the Tenant’s dispute of a rent increase by the Landlord is dismissed, without leave to reapply.

As I have found the Tenant’s testimony to be inconsistent and not supported by evidence, I find that, on a balance of probabilities, the Tenant has failed to prove the details of the Landlords’ behaviour during the tenancy. The Tenant’s application for an order to suspend or set conditions on the Landlords’ right to enter the rental unit is dismissed, without leave to reapply.

As I have found the Tenant’s testimony to be inconsistent and not supported by evidence, I find that, on a balance of probabilities, the Tenant has failed to prove the details of this tenancy. 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, without leave to reapply

Given that neither party was successful I find that they are not entitled to recover their filing fees.

## **Conclusion**

The Landlord’s application for an Order of Possession is dismissed without leave to reapply. This tenancy shall continue until it is ended in accordance with the *Act*.

All other aspects of both applications are dismissed without leave to reapply.

The parties must cover the cost of their own filing fee.

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: September 20, 2024

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Residential Tenancy Branch