

## **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
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Tenant B.A.T., tenant B.A.T.'s legal advocate R.F., and tenant J.Q. attended the hearing for the Tenants.

Landlord P.Y. attended the hearing for the Landlords.

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

The Landlord testified that he received the Proceeding Package from the Tenants and had sufficient time to review it. I find that the Landlord was served in accordance with section 89 of the Act.

### **Service of Evidence**

The Landlord testified that he received the Tenants' evidence and had sufficient time to review it.

The Tenants testified that they received the Landlord's response evidence and had sufficient time to review it.

I find that both parties' evidence was served in accordance with section 88 of the Act.

### **Preliminary Matters**

#### *Parties Removed as Applicants*

The Tenants confirmed that that N.S., R.T.2 and L.T. live with the Tenants but are not named as parties in the tenancy agreement. Therefore, I amended the application to remove them as applicants.

### *Landlords and Tenants as per Prior Decision*

For the purpose of this application, I have determined that A.V.L and P.Y. are the landlords while B.A.T, J.Q. and R.T. are the tenants.

In reaching this conclusion, I considered a prior decision ("0932") between the parties, where P.Y. conceded that the primary lease held by his son, R.Y., is invalid. Instead, it was found that P.Y. is the true landlord as A.V.L. owns the rental property and P.Y. controls A.V.L.

Therefore, I proceeded with the hearing on the basis that there is no sublease and B.A.T, J.Q. and R.T. are A.V.L./P.Y.'s direct tenants.

### **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 recover the filing fee for this application from the Landlord?

### **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 and the Tenants agreed that this tenancy began on November 1, 2017, with a monthly rent of \$2,600.00, due on first day of the month. The Tenants testified that the Landlord holds a security deposit in the amount of \$3800.00. The Landlord testified that he is not sure about the amount of the security deposit but stated that it may be \$3,800.00.

The Landlord and the Tenants also agreed that the Landlord served the 10 Day Notice for unpaid utilities on July 8, 2024, by attaching it to the Tenants' door. They agreed that the 10 Day Notice stated that utilities charges in the amount of \$106.25 that were due on June 19, 2024 had not been paid.

The Tenants testified that they are required to pay all City of Richmond utility costs. They stated that the Landlord sent them the bill on May 6, 2024, which stated that the Tenants owed \$881.29. The Tenants said that they paid this amount.

Both parties submitted a copy of the utility bill into evidence. It stated that \$881.29 was due if payment is made on or before the due date of June 13, 2024, and \$979.21 was due if payment is made after the due date.

The Landlord testified that along with utility bill, an additional balance of \$75.01 was outstanding, as a result of an overpayment on a previous utility bill by the Landlord.

The Landlord testified that he found out on the due date of June 13, 2024, that he had received two payments of \$881.29 and \$75.00 from the Tenants. The Landlord explained that the amount listed in the 10 Day Notice results from the Tenants paying him one cent less than the full amount due prior to or on the due date listed in the utility bill.

The Landlord testified that he had paid the utility bill at issue before the due date, thus benefiting from the discounted rate. However, he stated that he expects the Tenants to pay him the full amount instead of the discounted rate, since \$00.01 was still owing past the due date.

Both parties agreed that the one cent shortfall was paid by the Tenants to the Landlord on June 18, 2024.

The Landlord argued the Tenants agreed to pay the increased amount listed in the utility bills, even if he paid the discounted amount, if the Tenants did not pay him by the due date in the bill.

The Tenants argued that there was no unpaid utility amount when the notice was served and there is no unpaid utility amount now since the Landlord paid the bill prior to the due date, such that there was no late fee incurred by him. The Tenants emphasized they reimbursed the Landlord for all utility costs they were responsible for under the tenancy agreement and argued that the Landlord is now seeking an additional fee in contravention of the Residential Tenancy Act.

## **Analysis**

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

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 ("RTB"). If the tenant(s) do 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).

Based on the undisputed testimony of both parties, I find the Landlord served the 10 Day Notice on July 8, 2024, by attaching it to the Tenants' door. The Tenants acknowledge receiving the 10 Day Notice the same day it was served.

RTB records show that the Tenants disputed the notice in time, on July 13, 2024.

Based on the undisputed testimony of both parties, I find that the parties agreed that the Tenants would be responsible for all City of Richmond utilities.

Both parties agree that the Landlord paid the utility costs in question before the due date, therefore benefiting from the discounted rate. The parties also agree that the Tenants paid the discounted rate of \$881.29 plus the outstanding \$75.00 on June 13, 2024, with the one cent shortfall being paid on June 18.

The Landlord argued the Tenants agreed to pay the increased amount listed in the utility bills if the discounted amount was not paid by them to him by the due date in the bill. The Tenants dispute this. I find that the Landlord has failed to establish on a balance of probabilities that the Tenants agreed to pay the additional amount in circumstances where the late fee had not been incurred.

As a late charge had not been incurred by the Landlord, I find that the full amount of the outstanding utility charges was \$881.29, not \$979.21.

In light of the foregoing, I find that there were no outstanding utility charges as claimed by the Landlord, as the Tenants had paid them in full prior to the issuance of 10 Day Notice. I find that the Landlord has failed to establish that the 10 Day Notice should be enforced.

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

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

As the Tenants were successful in this application, the Tenants' application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is granted.

In accordance with section 72 of the Act, I order the Tenant to deduct \$100.00 from their next rent payment in full satisfaction of the monetary award for the filing fee.

### **Conclusion**

The 10 Day Notice is cancelled and is of no force or effect.

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

The Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is granted.

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 12, 2024

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Residential Tenancy Branch