

DECISION

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- A Monetary Order for unpaid rent under section 67 of the Act
- A Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- A Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also dealt with the Tenants' 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

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlords were served on August 18, 2024, in accordance with section 89(1) of the Act.

I find that the Tenants were served on August 16, 2024, in accordance with section 89(1) of the Act.

Service of Evidence

Based on the submissions before me, I find that the Landlords' evidence was served to the Tenants in accordance with section 88 of the Act.

The Landlords argued the second package of evidence was served late by the Tenants. The Tenants argued the evidence was not served late and that it was provided as a response to the Landlords' evidence. Tenant H.C. advised it was provided to the Landlords on September 6, 2024. There are different deadlines for the service of evidence depending on if the party is a respondent or an applicant. In this case the parties are both applicants and respondents. As such, the deadline for a respondent is 7

days before the hearing, based on Rule of Procedure 3.15. Given that the Tenants are both respondents and applicants, I find that the evidence was served within the deadline required for a respondent. The second round of evidence included a spreadsheet and written comments. Tenant H.C. made most of the comments in their submissions during the hearing, as such, I find that including the written statement is not prejudicial to the Landlords. Furthermore, the spreadsheet was not relevant to the Decision and as such was not prejudicial to the Landlords to include. Based on the submissions before me, I find that the Tenants' evidence was served to the Landlords in accordance with section 88 of the Act.

Preliminary Issues

- Amend Landlords' Application

The Landlords advised they are no longer seeking the \$1,000.00 for compensation and wanted to reduce the monetary claim for damages. The Landlords are no longer seeking the \$120.00 sought for damage to a fridge. Given that this reduces the amount being sought against the Tenants, I find that it does not prejudice the Tenants and I amend the Landlords' application to remove these amounts.

Issues to be Decided

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

Are the Landlords entitled to a Monetary Order for unpaid rent?

Are the Landlords entitled to a Monetary Order for damage to the rental unit or common areas?

Are the Landlords entitled to recover the filing fee for this application from the Tenants?

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.

Evidence was provided showing that this tenancy began on February 1, 2024, with a monthly rent of \$1,100.00. The parties disagree about the date rent is due. The Landlords' argued rent is due on the first of the month and the Tenants argued it was due every two weeks. The parties advised there was no written tenancy agreement and the Tenants previously rented from the Landlords at other rental addresses.

The Tenants are disputing a 10 Day Notice for Unpaid Rent for \$2,200.00 and also the 10 Day Notice included \$1,100.00 for an unpaid damage deposit and \$1,000.00 for moving costs (the 10 Day Notice). The parties advised the 10 Day Notice was posted to the rental unit door August 7, 2024, and the Tenants received it August 10, 2024.

The Landlords are seeking unpaid rent, damages and compensation.

10 Day Notice

The Landlords' position is the Tenants did not pay rent for July and August 2024. The Landlords' advised the Tenants did make partial payments of \$1,100.00 and \$300.00 towards the unpaid rent but did not pay rent for September 2024. The Landlords argued the Tenants owed \$1,900.00 for unpaid rent.

The Tenants advised they paid \$1,100.00 towards the unpaid rent on August 20, 2024, and \$350.00 on September 3, 2024. The Tenants argued the 10 Day Notice was not dated and was missing the 3rd page. The Landlords disputed this and advised they provided all 3 pages and dated the 10 Day Notice. The Landlords provided a witness statement that confirmed all 3 pages were posted on the rental unit door.

The Landlords' advised they included \$1,000.00 on the 10 Day Notice for moving costs. The parties advised it was never discussed that the Tenants would owe an amount for the Landlords assisting with moving the Tenants into the rental unit. The Landlords also argued that they included \$1,100.00 on the 10 Day Notice for a security deposit that was never paid.

The Tenants' position is that they never agreed or discussed paying the Landlords for help with moving into the rental unit. Additionally, the Tenants argued they were never asked to pay a security deposit. The Tenants' advised they paid a previous security deposit to the Landlords for the previous rental unit they rented and never received that money back.

Unpaid Rent

The Landlords' application includes a claim for unpaid rent for July and August 2024 but this is addressed above in the discussion of the 10 Day Notice.

Damages

The Landlords are seeking the following damages:

Item	Description	Amount
1	Wooden Bedframe	\$600.00

2	Queen Size Mattress	\$900.00
3	Sofa Set	\$800.00
4	2 Night Tables	\$150.00
5	6 Drawer Dresser	\$350.00
6	2 Wooden Tables	\$80.00
	TOTAL	\$2,880.00

The Landlords' position is that the above listed items were provided to the Tenants as part of the tenancy. The Landlords provided some photographs of the items from before and a few photographs of some of the items now. The Landlords argued the items have been damaged by the Tenants' cats. No receipts were provided but the Landlords argued this was the cost associated with the items. The Landlords also did not provide a condition inspection report for the items, or an itemized list of items provided during the tenancy.

The Tenants' position is that only the bedframe, mattress, one sofa and dresser drawers were moved in the rental unit. The Tenants argued the other items were provided during the other tenancy and at a different rental address. The Tenants also argued no condition inspection report was done on the items when they were given.

Analysis

Should the Landlords' 10 Day Notice be cancelled? If not, are the Landlords 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. 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).

I find that the 10 Day Notice was deemed served to the Tenants on August 10, 2024, and that the Tenants had until August 15, 2024, to dispute the 10 Day Notice or to pay the full amount of the arrears. The Tenants disputed the 10 Day Notice on August 14, 2024, which is within the required timeframe.

I find that a 10 Day Notice for Unpaid Rent is used for unpaid rent and utilities and is not the appropriate form for the Landlords to seek moving costs and a security deposit. As such, the alleged missing security deposit amount and moving costs should not have been included on the 10 Day Notice and will not be addressed in this Decision.

The Tenants' position is that the 10 Day Notice had deficiencies, given that it was missing the date it was signed and missing the 3rd page. The Landlords' position is that the 10 Day Notice was dated and had all 3 pages.

Section 52 of the Act provides that in order to be effective, a notice to end tenancy must be in writing, and must be signed and dated by the landlord or tenant giving the notice. Section 68(1) of the Act provides that if a notice to end tenancy does not comply with section 52 the notice may be amended if the person receiving the notice knew or should have known, the information that was omitted from the notice and in the circumstances, it is reasonable to amend the notice.

The Landlords argued that the 10 Day Notice was dated; however, the copy uploaded by the Tenants is missing the date the 10 Day Notice was signed. There is no evidence that another 10 Day Notice was issued to the Tenants with the date added or that the 10 Day Notice was amended to add the date it was signed. While the 10 Day Notice was posted on the rental unit door August 7, 2024, the Landlords could have signed the 10 Day Notice on another date and there is no way for the Tenants to have known what date it was signed. As the 10 Day Notice is not dated, I find that the 10 Day Notice does not comply with the Act and the notice is not effective to end the tenancy. I also find that I cannot amend the 10 Day Notice as it would not be reasonable given the facts. The Landlords remain at liberty to issue an effective notice to end tenancy for unpaid rent.

Therefore, the Tenants' application is granted for cancellation of the 10 Day Notice under sections 46 and 55 of the Act.

Are the Landlords entitled to a Monetary Order for unpaid rent/utilities?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

The Landlords' application included a claim for \$2,200.00 in unpaid rent for July and August 2024.

Based on the testimony of the parties I find that the Tenants paid \$1,100.00 and \$350.00 towards the unpaid rent for July and August 2024. As such, I find that the Tenants owe \$750.00 towards the unpaid rent for July and August 2024. The Tenants did not present any evidence that they had a legal reason to withhold this rent under the Act. Based on the above, I award the Landlords' a Monetary Order of \$750.00 for unpaid rent.

The Landlords did not amend their application to seek September 2024 unpaid rent and as stated above the 10 Day Notice was cancelled. As such, I do not amend the application to include unpaid rent for September 2024. The Landlords are free to issue a new 10 Day Notice of Unpaid Rent for September 2024, but it will not be addressed in this Decision.

Are the Landlords entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

I decline to award any compensation for any of the items sought by the Landlords. First, the Landlords did not provide a list of items that were provided during the tenancy and the Tenants disputed that all the items were brought over to the new rental unit. As such, I find I am unable to confirm which items were provided to the Tenants. Second, while the Landlords provided some photographs there is no condition inspection report for the items that detailed the condition when first given to the Tenants and the current condition. As such, I find I am unable to determine if any damage was done by the Tenants. Third, the Landlords did not provide any proof of the amount or value of the damage or loss.

Based on the above, I find that the Landlords have failed to establish that the Tenants breached the Act, regulation or the tenancy agreement, that any loss was suffered and failed to prove the value of the damage or loss.

For the above reasons, the Landlords' application for a Monetary Order for money owed for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is dismissed, without leave to reapply.

Are the Landlords entitled to recover the filing fee for this application from the Tenants?

As the Landlords were partially successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The Tenants' application is granted for cancellation of the 10 Day Notice under sections 46 and 55 of the Act.

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.

I grant the Landlords a Monetary Order in the amount of **\$850.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid rent under section 67 of the Act	\$750.00
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$850.00

The Landlords are provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Landlords' application for damages is dismissed, 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: September 16, 2024

Residential Tenancy Branch