

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's Applications 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) (Repeated in both applications)
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement
- an order to suspend or set conditions on the Landlord's right to enter the rental unit
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement

I deem the Landlord was served with the Tenant's hearing package and evidence in person, by October 5, 2024. The Tenant gave affirmed testimony that they delivered the documents to the Landlord's address for service, and provided them to an agent of the Landlord (the Landlord's assistant). The Tenant testified that the Landlord's agent signed a document confirming that they had been served with the Tenant's documents.

### **Preliminary Matters**

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3, states that the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

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
- an order to suspend or set conditions on the Landlord's right to enter the rental unit
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement

Aside from the Tenant's application to cancel the 10 Day Notice, I am exercising my discretion to dismiss these issues identified in the application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

## **Issues to be Decided**

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

## **Analysis**

The 10 Day Notice was issued to the Tenant on September 29, 2024, and served to the Tenant in person.

Under section 46 of the Act, a landlord may give a 10 Day Notice for unpaid rent on any day after the rent is due, if the rent is not paid. If the 10 Day Notice is disputed by a tenant within 5 days receiving the notice, the landlord has the burden to prove that rent or utilities are unpaid on a balance of probabilities.

I find the Tenant made their application to dispute the Landlord's 10 day notice on October 1, 2024, two days after the 10 day notice was issued. I find the Tenant made their application for dispute within 5 days as required by section 46 of the Act. Therefore, I find the Landlord has the burden to prove they had a valid reason to issue this 10 Day Notice and obtain an end to the tenancy.

The Landlord did not attend the hearing. The hearing started at 9:30am and ended at 9:40am, enabling the Landlord to call in and participate.

As the Landlord did not attend the hearing to give any testimony or present evidence in support of the 10 Day Notice to end tenancy, I find the Landlord has failed to meet their burden to prove they had a valid reason to issue the 10 Day Notice and obtain an end to this tenancy.

Therefore, the Tenant's application to cancel the Landlord's 10 Day Notice under section 46 of the Act is granted.

The 10 Day Notice dated September 29, 2024, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

## **Conclusion**

The Tenant's application to cancel the Landlord's 10 Day Notice under section 46 of the Act is granted.

The 10 Day Notice dated September 29, 2024, is cancelled and of no force or effect.

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

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: October 25, 2024

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Residential Tenancy Branch