

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Tenants, L.S. and D.V., and the Landlord, H.P.C.C. under the *Residential Tenancy Act* (the Act). The Tenants' Application for Dispute Resolution, filed on October 7, 2024 (the Application), is 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
- An order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 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 October 11, 2024 (the Cross-Application), is for:

- An Order of Possession based on 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 the Cross-Application from the Tenants under section 72 of the Act

Tenant, L.S. (the Tenant) and Tenant, D.V. attended the hearing with a support person, A.N., and were represented by P.L., Advocate for the Tenants.

C.M., who confirmed he is acting as Agent for the corporate Landlord, attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

C.M. states the Landlord did not receive a Notice of Dispute Resolution Proceeding from the Tenant and P.L. confirmed the Tenant did not serve this document on the Landlord. Despite this, C.M. acknowledged being notified of the call in details for the hearing and consented to the hearing proceeding as scheduled.

C.M. states the Proceeding Package for the Cross-Application, including copies of the Landlord's evidence, was personally served to the Tenants at the rental unit on October 15, 2024 and the Landlord has submitted Proof of Service forms (RTB-55) into evidence confirming this service. The Proof of Service forms are signed by C.M., a witness and each of the Tenants.

Based on the submissions and evidence before me, I find that the Tenants were each served in person with the Proceeding Package, including the Landlord's evidence, for the Cross-Application on October 15, 2024, in accordance with section 89(1)(a) of the Act.

Service of Evidence

C.M. acknowledged the Landlord received the Tenants' evidence in advance of the hearing and that they had adequate time to review it. I therefore find that the Tenants' evidence was adequately served to the Landlord under section 88 of the Act.

P.L. acknowledged the Tenants received the Landlord's evidence in advance of the hearing and that they had adequate time to review it. I therefore find that the Landlord's evidence was adequately served to the Tenants under section 88 of the Act.

Preliminary Matters

Adding a Party to the Proceeding

The tenancy agreement submitted into evidence by the Landlord names both the Tenants shown on the cover page of this decision as tenants. Although the Cross-Application named D.V. as a respondent, D.V. was not named as an applicant in the Application filed by Tenant, L.S. In accordance with Rule 7.15 of the Residential Tenancy Branch (RTB) Rules of Procedure, I find it is appropriate to add D.V. as a Tenant for the purposes of the Application.

As D.V.'s given name was misspelled in the Landlord's Cross-Application, I have amended Tenant, D.V.'s given name in accordance with Rule 7.12 of the RTB Rules of Procedure. The Tenant, D.V.'s correct name is reflected on the cover page of this decision.

Issues to be Decided

Should the 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession and a Monetary Order?

Are the Tenants entitled to an order regarding the Tenants' dispute of a rent increase by the Landlord?

Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Are the Tenants entitled to recover the filing fee for the Application from the Landlord? If not, is the Landlord entitled to recover the filing fee for the Cross-Application from the Tenants?

Background and Evidence

I have reviewed all evidence before me, including testimony of the parties, but will refer only to what I find relevant for my decision.

It was agreed upon by the parties that the tenancy began on January 1, 2018, that the monthly rent is \$900.00, due on the first day of the month, and that the Tenants paid a security deposit in the amount of \$450.00 on December 30, 2017. The Landlord confirmed the security deposit is still held in trust and that no pet damage deposit was required or paid.

The 10 Day Notice was signed and dated by C.M. on October 2, 2024 and the parties agree that it was served on the Tenant in person on the same day. The 10 Day Notice states unpaid rent of \$1,731.50 was due on October 1 and provides an effective date of October 13.

C.M. testified that the 10 Day Notice was issued after only part of the Tenants' monthly rent for October 2024 was received. C.M. states that the amount due as stated on the 10 Day Notice includes a \$1,500.00 charge to replace the door to the rental unit after it was broken down by police seeking entry to the rental unit. C.M. confirmed the amount of rent owing when the 10 Day Notice was issued was \$231.50.

P.L., on behalf of the Tenants, confirmed the 10 Day Notice was received by the Tenant on October 2, 2024 and states the Tenant paid the \$231.50 in rent arrears on October 3 and filed the Application to dispute the 10 Day Notice on October 7. P.L. states the Tenants dispute that the remaining \$1,500.00 being claimed by the Landlord is unpaid rent because it relates to the damaged door.

The Tenant states he paid the rent owing for November 2024 on November 1. While C.M. had not checked to confirm whether November's rent had been paid prior to the hearing, he did not dispute the Tenant's assertion that his rent payments were currently up to date. It was also undisputed that the Tenants continue to reside in the rental unit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Should the 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession and a Monetary Order?

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 RTB. 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).

It was undisputed that the Landlord served the 10 Day Notice on the Tenant, L.S. in person on October 2, 2024, in accordance with section 88(a) of the Act. I therefore find the Tenants were duly served and received the 10 Day Notice on October 2. Therefore, the Tenants had until October 7 to dispute the 10 Day Notice or to pay the arrears.

Based on the testimony of the parties, I find that only \$231.50 of the \$1,731.50 listed in the 10 Day Notice was rent owed by the Tenants as of October 1, 2024. It is uncontested that the remaining \$1,500.00 is a repair cost being sought by the Landlord, which is not a matter that is before me in either the Application or the Cross-Application.

It is undisputed that the Tenant paid the overdue rent of \$231.50 on October 3, 2024. It is also undisputed that the Tenant filed the Application to dispute the 10 Day Notice on October 7, within the required five days. I find that the Tenant paid the full amount of rent arrears within 5 days of receiving the 10 Day Notice and that the 10 Day Notice therefore has no effect in accordance with section 46(4)(a) of the Act.

For the above reasons, the Tenants' application to cancel the 10 Day Notice under sections 46 and 55 of the Act is granted. The 10 Day Notice of October 2, 2024 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Are the Tenants entitled to an order regarding the Tenants' dispute of a rent increase by the Landlord?

As the Landlord's evidence was that the additional \$1,500.00 claimed in the 10 Day Notice is in relation to damage to the rental unit, and based on the evidence of the parties, I find there has been no rent increase for the purposes of Part 3, section 41 of the Act. Therefore, it is not necessary to analyze this portion of the Tenants' Application and I dismiss the Tenants' Application for an order regarding a rent increase by the Landlord under section 41 of the Act, without leave to reapply.

Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Rule 6.2 of the RTB Rules of Procedure permits an arbitrator to dismiss other claims that have been included in an application to cancel a notice to end tenancy. The request in the Tenants' Application for the Landlord to comply with the Act is in relation to the

Landlord asking for more money than the agreed upon monthly rent. As noted above, the \$1,500.00 being requested by the Landlord is in respect of a repair cost and the parties agree the Landlord has not increased the Tenants' monthly rent. Therefore, I find it is not necessary to further analyze the Tenants' Application for an order for the Landlord to comply with the Act, regulations or a tenancy agreement under section 62 of the Act.

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, with leave to reapply. I make no findings on the merits of the matter.

Are the Tenants entitled to recover the filing fee for the Application from the Landlord? If not, is the Landlord entitled to recover the filing fee for the Cross-Application from the Tenants?

As the Tenants were successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for the Application under section 72 of the Act. The Tenants are ordered to reduce their rent by \$100.00 to recover their filing fee from the Landlord.

Conclusion

I grant the Tenants' Application to cancel the 10 Day Notice under section 46 of the Act. This tenancy continues until it is ended in accordance with the Act.

I grant the Tenants a monetary order in the amount of **\$100.00** as follows:

Monetary Issue	Granted Amount
Tenant will deduct \$100.00 from future rent to Landlord under section 72 of the Act	\$100.00
Total Amount	\$100.00

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: November 21, 2024

Residential Tenancy Branch