

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The tenant requested:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The landlord requested:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Preliminary Matters-Adjournment of Tenant's Application

The tenant testified that they had served the landlord with their application to cancel the 1 Month Notice. The landlord testified that they did not receive the tenant's application.

The matter was discussed with both parties, and both parties consented to an adjournment of the hearing in relation to the tenant's application, in order for both parties to submit and serve each other with evidence related to the dispute.

I adjourn the tenant's application to be heard at the reconvened hearing time noted in the attached Notice. I order that the proceeding be reconvened in accordance with section 67 of the *Act*. **Notices of Reconvened Hearing are enclosed with this decision. Please note the calling instructions will be included with this decision, and pay attention to the participant codes as they may differ from the last one.**

I allow the landlord to submit and serve evidence on the tenant, which must be uploaded to the online portal and served on the tenant no later than **February 4, 2025**.

I allow the tenant to upload and serve any evidence on the landlord that they wish to rely on no later than **February 5, 2025**.

I note that the above deadlines differ from those in the RTB Rules of Procedure. These deadlines are to ensure that all parties have sufficient time to review the documents in advance of the adjudicative hearing. Where the deadlines in this decision and the Rules of Procedure differ, the deadlines in this decision prevail.

No further adjournments will be granted unless the parties can establish that there are extenuating reasons for doing so.

As noted in RTB Rule 3.7, evidence must be organized, clear and legible. I note that an arbitrator has the discretion to decide whether evidence is or is not relevant to the issues identified on the application and may decline to consider evidence that they determine is not relevant.

I order that this is not an opportunity for the landlord to file any further applications for dispute resolution to be crossed with the tenant's application.

I order this is not an opportunity for the tenant to file another application for dispute resolution to be joined with this application.

I order this is not an opportunity for the tenant to amend this current application.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The tenant acknowledged service of the landlord's Proceeding Package and evidence. Based on the submissions before me, I find that the Landlord's application and evidence was served to the Tenant in accordance with sections 88 and 89 of the Act.

The tenant provided oral testimony in response to the landlord's application.

Issues to be Decided

Is the landlord entitled to an Order of Possession pursuant to the 10 Day Notice?

Is the landlord entitled to a Monetary Order for Unpaid Rent?

Is the Landlord 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.

Both parties confirmed that there is no written tenancy agreement for this tenancy. The landlord could not confirm during the hearing the exact date that this tenancy began, which may be approximately May 15, 2022, as noted in the landlord's application.

The landlord testified that the tenant resides in a double occupancy room located inside a Single-Room Occupancy Hotel, where rent is set at \$1,300.00 per month, payable on the first day of the month. The landlord testified in the hearing that the tenant had resided in the room with their partner in the past, and then other roommates. After the last roommate had moved out, the tenant has been residing in the room as a single occupant, and has refused to re-locate to a smaller room, or pay the full rent.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on December 21, 2024, stating that the tenant owes \$7,800.00 for the period of December 1, 2023 to December 1, 2024. The landlord submitted a log of the payments made for this rental unit. The landlord requests an Order of Possession as well as a Monetary Order for this amount.

The tenant does not dispute the amounts paid, but argued that the rent was \$1,300.00 when occupied by two occupants, and only \$650.00 when occupied by himself. The tenant argued that the rent is paid directly by the Ministry, and the landlord is upset about other issues and wants to end the tenancy because of those reasons.

Analysis

Is the Landlord entitled to an Order of Possession and Monetary Order for Unpaid Rent?

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(s) do not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy.

In review of the evidence and testimony before me, I find that no written tenancy agreement exists between the parties. Both parties provided contrasting testimony as to what the terms of the agreement are, and how much the monthly rent is.

I find that the landlord's evidence falls short in supporting that the rent payable by this tenant is \$1,300.00 per month. Although it is undisputed that the landlord was previously collecting \$1,300.00 per month, I find their own evidence shows that the tenant has only been paying \$650.00 per month for over a year. I am not satisfied that

the evidence shows that the landlord had issued any letters or previous Notices to End Tenancy informing the tenant that rent was actually \$1,300.00 per month, nor am I satisfied that the evidence supports that the tenant had agreed to pay that amount. I find that the tenant's rent is set at only \$650.00 per month, which the tenant has paid.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Landlord has not shown sufficient grounds to support that the tenant has been in arrears for this tenancy. I do not find the 10 Day Notice is valid, and therefore I dismiss the landlord's application for an Order of Possession and Monetary Order for Unpaid Rent, without leave to reapply.

The 10 Day Notice dated December 21, 2024 is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the Act.

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

I dismiss the landlord's application to recover the filing fee as the landlord was not successful with their application.

I adjourn the tenant's application to be heard at the reconvened hearing time noted in the attached Notice.

The landlord's application 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: January 29, 2025

Residential Tenancy Branch