

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution filed on January 23, 2025, 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) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act

This hearing dealt with the Landlord's Application for Dispute Resolution filed on January 27, 2025, under the *Residential Tenancy Act* (the Act) for:

- to obtain an Order of Possession based on the 10 Day Notice
- Monetary Order for unpaid rent
- to recover the cost of the filing fee

Added 2nd application of the Tenant, pursuant to section 73 of the Act:

This hearing dealt with the Tenant's Application for Dispute Resolution filed on February 7, 2025, under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (2nd 10 Day Notice)

Both parties appeared and are noted on the covering page of this Decision.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Neither party raised any issues with service of the Proceeding Package.

Preliminary issue

In this case, the Tenant received a second 10 Day Notice for Unpaid rent for Unpaid Rent (2nd 10 Day Notice) for subsequent unpaid rent for February 2025. The Tenant filed an application for dispute resolution which the hearing is scheduled for March 5, 2025. I have noted the file number on the covering page of this Decision.

I note in the details of the Tenants application to be heard on March 5, 2025, it states the reason why the 2nd 10 Day Notice should be cancelled is:

“There’s already is a proceeding on February 18, 2025.

[Reproduced as written]

The issues before me today, February 18, 2025, is whether the 10 Day Notice should be cancelled or if the Landlord is entitled to an Order of Possession and a Monetary Order for the Unpaid rent.

If rent was not paid for January 2025, the tenancy will end in accordance with section 55 of the Act based on the 10 Day Notice, and the hearing of March 5, 2025, would be moot. In addition, the Landlord would be entitled to recover repayment of rent for January and February 2025, rent pursuant to section 55.1 of the Act at today’s hearing, February 18, 2025, if not paid.

Based on the above, I find it appropriate to hear these matters together at today’s hearing, February 18, 2025, pursuant to section 73 of the Act, as the Tenant has 2 applications for dispute resolution that were accepted, and they are related disputes with the same parties. I have added the Tenant’s 2nd application to this matter and indicated above.

Issues to be Decided

Should the 10 Day Notice or the 2nd 10 Day Notice be cancelled?

Is the Landlord entitled to an Order of Possession based on unpaid rent?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties entered into a fixed term tenancy agreement that commenced on November 12, 2024 and was to expire on October 31, 2025. Rent of \$2,600.00 was to be paid on the 1st day of each month. The Tenant paid a security deposit of \$1,300.00.

The parties agreed that the Tenant received the 10 Day Notice, and the subsequent 2nd 10 Day Notice.

The Tenant confirmed at the hearing that they have not paid rent to the Landlord for January and February 2025. The Tenant stated that they would like to settle this matter and have a repayment plan to have the tenancy continue.

The Tenant stated that the Landlord told them if they moved out by January 31, 2025, they would not have to pay the rent. The Tenant filed text messages into evidence. I note the text messages do not support the Tenant's testimony and even if they did the Tenant did not move out.

The Landlord stated that they do not want to enter into any settlement agreement with the Tenant as this tenancy just started in the middle of November 2024 and the Tenant has failed to pay rent for two months.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Should the 10 Day Notice and/or the 2nd 10 Day Notice be called.

Section 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations, or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant did not pay rent for January 2025 and was served with 10 Day Notice. The Tenant did not pay rent for February 2025 and was served with the 2nd 10 Day Notice. The Tenant disputed the 10 Day Notice and the 2nd 10 Day Notice. The Tenant filed

copies of the notices to end tenancy into evidence. I find the 10 Day Notice and the 2nd 10 Day Notice comply with section 52 of the Act.

Under the legislation the Tenant may dispute the 10 Day Notice/2nd 10 Day Notice for specific reasons, such as they have proof that their rent was paid or that the Tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the Tenant filed to dispute the 10 Day Notice and 2nd 10 Day Notice, I find the Tenant's applications have no merit as the Tenant admitted rent was not paid. I find the Tenant breached the Act, when they failed to pay the rent. Therefore, I dismiss the Tenant's applications without leave to reapply.

Is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent.

As the Tenant's applications are dismissed and the Tenant admitted rent has not been paid, I find the Landlord is entitled to an order of possession and a monetary order for the repayment of rent, pursuant to section 55(1) and 55(1.1) of the Act.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **seven (7) days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **Tenant is cautioned** that costs of such enforcement are recoverable from the Tenant.

I find that the Landlord is entitled to monetary order for the unpaid rent for January and February 2025, pursuant to section 55(1.1) of the Act in the amount of **\$5,200.00**.

I find that the Landlord has established a total monetary claim of **\$5,300.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the Landlord retain the security deposit of **\$1,300.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 of the Act for the balance due of **\$4,000.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **Tenant is cautioned** that the costs of such enforcement are recoverable from the Tenant.

The Tenant is further cautioned that they should they be establishing a pattern of unpaid rent, they may be referred to the Compliance and Enforcement Unit for investigation.

Conclusion

The Tenant's applications are dismissed. The Landlord is granted an order of possession and a monetary order for the repayment of unpaid rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 18, 2025

Residential Tenancy Branch