

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution for both the Landlord and the Tenant.

The Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act), made on January 16, 2025 is for:

- An Order of Possession for unpaid rent pursuant to sections 46 and 55

The Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act), made on January 28, 2025 is 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

Landlord A.P., Landlord A.-R.S. attended the hearing for the Landlord.

Tenant's Advocate A.R. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

I find that the Tenant acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

Service of Evidence

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

Based on the submissions before me, I find that two of the Tenant's documents, the 'Indemnity Evidence', were not served to the Landlord in accordance with section 88 of

the Act. I will not rely on this evidence in making my decision. I find that the rest of the Tenant's evidence was served to the Landlord in accordance with the Act.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent?

Is the Tenant entitled to more time to dispute the 10 Day Notice to End Tenancy for Unpaid Rent?

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 October 15, 2024 with a monthly rent of \$1,150.00, due on first day of the month, with a security deposit in the amount of \$1,150.00.

The Landlord testified that they did not receive rent from the Tenant for January 2025. The Landlord issued a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities on January 4, 2025, by posting it to the Tenant's door, which stated the Tenant owed \$1,150.00 in rent, and must move out of the rental unit by January 14, 2025 (the "10 Day Notice").

The Tenant's Advocate testified that the rent for January 2025 was paid to the Landlord on December 18 or 20, 2024. The Tenant provided a copy of the rent cheque with a stamp that said it was received by "Lovepreet" on December 20, 2024. The Tenant also provided a copy of their account ledger which stated that the cheque was issued on December 18, 2024.

The Landlord testified that they do not employ a person named "Lovepreet" and they never received the rent cheque.

The Tenant's Advocate testified that the rent cheque for the Landlord was re-issued, and the Landlord signed an 'indemnity form.' The Landlord agreed that they signed the form, so that they could receive a duplicate cheque. The Landlord did not have a copy of the form. The Landlord was still waiting for the duplicate cheque.

The Tenant made their application to dispute the 10 Day Notice on January 28, 2025, and asked for an extension of time to dispute the 10 Day Notice.

The Tenant's Advocate testified that they are a caseworker who assists the Tenant. The Tenant's Advocate testified that the Tenant required more time to dispute the 10 Day Notice because it was issued just after Christmas, when the temperature outside was -30 degrees Celsius. The cold weather and time of year made it difficult for the Tenant to gather evidence and attend appointments.

Analysis

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Under section 44.1 of the Act, a landlord must not give a tenant a notice to end tenancy unless, when the notice is given, the relevant circumstances applied, or the landlord had a reasonable belief that the circumstances applied.

Residential Tenancy Branch Rules of Procedure 6.6 states that 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. The landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Under Rule 6.6 and section 44.1, the Landlord must show that either:

- the Tenant had, in fact, failed to pay rent when it was due for the month of January 2025, or
- the Landlord had a reasonable belief that the Tenant had failed to pay rent when it was due.

The Landlord testified that they did not receive rent from the Tenant for the month of January 2025. The Landlord did not provide an account ledger, bank statement, or any documentation, to show that they did not receive the Tenant's rent for January 2025.

The Tenant's Advocate however provided detailed testimony and evidence to show that the rent for January 2025 had been paid in December, and there were no arrears of rent when the 10 Day Notice was issued.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. I find that the Landlord has not provided evidence over and above their testimony to establish that the Tenant failed to pay rent for January 2025.

On a balance of probabilities, I find that the Landlord has not proven the existence of the required circumstances for issuing the 10 Day Notice. That is to say, I find that the Landlord has not proven that the Tenant failed to pay rent when it was due for the month of January 2025. I further find that the Landlord has not established that they had a reasonable belief that the Tenant had not paid rent when it was due.

Based on the evidence before me, and on a balance of probabilities, I find that the Landlord has not shown sufficient grounds to validate the 10 Day Notice and obtain an end to this tenancy.

Therefore, the Landlord's application for an Order of Possession based on the 10 Day Notice to End Tenancy is dismissed, without leave to reapply. The 10 Day Notice to End Tenancy, issued on January 4, 2025 is cancelled.

Is the Tenant entitled to more time to dispute the 10 Day Notice to End Tenancy for Unpaid Rent?

As I have decided the issue of the 10 Day Notice to End Tenancy on other grounds, the Tenant's request for additional time to dispute the 10 Day Notice is unnecessary, as the 10 Day Notice is cancelled.

Conclusion

The Landlord's application for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to sections 46 and 55, is dismissed without leave to reapply.

The 10 Day Notice of January 4, 2025, is cancelled and is 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: March 5, 2025

Residential Tenancy Branch