

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Landlord and the Tenant under the *Residential Tenancy Act* (the "Act").

The Tenant's Application for Dispute Resolution 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 requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

The Landlord's Application for Dispute Resolution is for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act

Tenant J.S., Witness M.W. attended the hearing for the Tenant
Agent J.H., Witness J.B. attended the hearing for the Landlord

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

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

The Landlord's Agent, J.H., testified that the Landlord was not served with the Tenant's Proceeding Package. However, the Landlord received an e-mail from the Residential Tenancy Branch, and the Landlord was ready to proceed with the hearing regarding the disputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Service of Evidence

The Tenant testified that they did not receive the Landlord's evidence. J.H. testified that it was posted on the Tenant's door, except for the video file. The Landlord did not provide any proof of service of their evidence on the Tenant.

J.H. testified that the Landlord did not receive the Tenant's evidence. The Tenant testified that they e-mailed it to the Landlord. The Tenant agreed that the Landlord had not given the Tenant an e-mail address as an address for service of documents, as required under the Act and Regulation.

I find that neither party has proven service of their evidence on the other under the Act. However, the 10 Day Notice to End Tenancy for Unpaid Rent of Utilities (the "10 Day Notice") was submitted by both parties as evidence. The parties confirmed that they both had copies of the 10 Day Notice.

Under section 71(2) of the Act, the arbitrator may determine that a record not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Under Rules 3.14 and 3.17, if the applicant does not serve their evidence on the respondent at least 14 days before the hearing, the arbitrator may decide whether to consider that evidence or not. One of the purposes of serving evidence is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position. The parties have both had the opportunity to review and respond to the 10 Day Notice.

I will refer to the 10 Day Notice as evidence for my decision. Under rule 3.14 and 3.17 I am excluding the Tenant's and the Landlord's other documentary evidence as the parties have not had the opportunity to prepare in response to other documents that were not served.

Preliminary Matters

At the start of the hearing J.H. corrected the Landlord's name on the Tenant's Application to the name of the corporation. Under section 64(3)(a) of the Act, I amended the name of the Landlord on the Tenant's application.

The Tenant's Application requests an Order that the Landlord comply with the Act, Regulation or Tenancy Agreement. As the Tenant did not serve their Proceeding Package or evidence on the Landlord, I find that the Landlord did not have sufficient notice of this claim. This portion of the Tenant's application is dismissed with leave to reapply, leave to reapply is not an extension of any applicable timelines.

Issues to be Decided

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

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

Background and Evidence

I have reviewed the 10 Day notice to End Tenancy, and the testimonies 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 1, 2024, with a current monthly rent of \$800.00, due on first day of the month, with a security deposit in the amount of \$400.00. The rental unit is located on a ranch where the Landlord's Agent J.H. works.

J.H. testified that they, on behalf of the Landlord, issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the Tenant's door on March 2, 2025. The 10 Day Notice stated that the Tenant must move out by March 12, 2025.

The 10 Day Notices states that the Tenant failed to pay \$800.00 rent, and \$400.00 pet deposit as of March 1, 2025. J.H. confirmed this information in their testimony.

The Landlord testified that the Tenant had not paid rent for March 2025, even after the 10 Day Notice was issued to the Tenant.

The Tenant testified that they paid \$800.00 rent on March 1, 2025 to J.H. in cash. The Tenant testified that their friend, the Witness M.W., saw the Tenant give the rent money to the Landlord.

M.W. testified that they were present in the rental unit when the Tenant paid their rent to J.H. in cash. M.W. testified that they could see through the window, down by the carport where J.H. was parked. M.W. testified that the Landlord was in their side-by-side vehicle with their dogs and no other person. M.W. states that they knew the Tenant paid \$800.00 because they helped the Tenant get the money together and gave the Tenant some money to make the rent.

J.H. testified that they did not see the Tenant on March 1, 2025 at all. J.H. testified that

J.B. testified that they were with J.H. the entire day on March 1, 2025 at the ranch where the rental unit is located. J.B. and J.H. worked together from 7 A.M. to about 5 P.M. or 7 P.M. as it was 'calving season'. J.B. did not see J.H. and the Tenant interact that day at all. J.B. was not able to recall specific details from March 1, 2025, even when J.H. questioned about a particular cow that was falling over on that day.

J.H. testified that the Landlord has a receipt book that keeps track of rent payments but they did not upload it for this hearing.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim.

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

Section 46 of the Act states that, upon receipt of a 10 Day Notice the tenants 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 tenants do 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).

The Tenant applied to dispute the 10 Day Notice on March 6, 2025 which is within the required time frame. The Landlord has the burden to prove that they had sufficient grounds to issue the 10 Day Notice and end this tenancy.

The testimony provided by the parties and their witnesses conflicts. The Tenant and their witness testified that the Tenant paid the rent in cash, directly to J.H. on March 1, 2025. J.H. and J.B. testified that J.H. did not even see the Tenant on March 1, 2025. J.H. testified that the rent was unpaid.

The Landlord did not submit or service on the Tenant, additional evidence, such as the receipt book, which would support J.H.'s testimony that the Tenant failed to pay rent for March 2025. When the evidence consists only of conflicting and disputed verbal testimony and evidence, then it is virtually impossible for a third party to establish facts.

As stated, the Landlord has the burden to prove that they had cause to end this tenancy. On a balance of probabilities, based on the testimonies and evidence before me, I find that the Landlord has not proven that the Tenant failed to pay rent for March 2025. 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 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act is dismissed without leave to reapply.

The Tenant's application is granted 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.

The 10 Day Notice of March 2, 2025, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

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

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

The Landlord and the Tenant have provided only conflicting testimony and the Landlord has not provided documentary evidence to support their claim for unpaid rent. I find that the Landlord has not proven that the Tenant failed to pay any rent.

The Landlord also testified that the Tenant failed to pay a pet damage deposit. A pet damage deposit is not rent. A claim that a damage deposit was not paid falls under a different section of the Act. Under Rule of Procedure 2.2 the claim is limited to what is in the application. I find that I am not required to make a determination regarding the pet damage deposit.

On a balance of probabilities, based on the testimonies and evidence before me, I find that the Landlord has not established that the Tenant owes the Landlord rent or utilities. The Landlord's application for a monetary order for unpaid rent is dismissed without leave to reapply.

Conclusion

The 10 Day Notice of March 2, 2025, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

The Landlord's application for a monetary order for unpaid rent is dismissed without leave to reapply.

The Tenant's Application for an Order that the Landlord comply with the Act, Regulation or Tenancy Agreement is dismissed with 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: April 24, 2025

Residential Tenancy Branch