Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

The Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (the :Act") on March 14, 2025, seeking:

- cancellation of a 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice") indicated served to them on March 9, 2025
- recovery of costs of emergency repairs they made during the tenancy
- the Landlord's compliance with the Act/tenancy agreement.

On March 18, 2025, the Landlord filed an Application seeking:

- an order of possession in line with the 10-Day Notice
- compensation for rent amounts owing
- recovery of the Application filing fee.

The Landlord's Application was crossed to that of the Tenant already in place, for the same scheduled hearing time. The Landlord and the Tenant both attended the scheduled hearing.

Preliminary Matter – unrelated issues

The Residential Tenancy Branch Rules of Procedure grant an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes "related issues", and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues:

> . . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply

The matter of urgency here is the possible end of this tenancy. The most important issue to determine is whether the tenancy is ending, based on the 10-Day Notice that the Landlord issued.

In line with this, I dismiss the following issues, with leave to reapply:

- recovery of costs of emergency repairs they made during the tenancy
- the Landlord's compliance with the Act/tenancy agreement.

Tenant's service of Notice of Dispute Resolution Proceedings and evidence to the Landlord

The Tenant in the hearing described sending the Notice of Dispute Resolution Proceedings to the Landlord via registered mail on March 17, 2025. The Tenant provided a tracking information sheet from Canada Post to show this: delivery on March 17, and "delivered to your concierge or building manager" on March 18.

In the hearing the Landlord stated they did not receive the copy of the Notice of Dispute Resolution Proceedings via registered mail for this hearing. The Landlord had their own information regarding their Application, with the hearing information enabling them to enter the scheduled hearing.

The Landlord had further communication on March 27 from the Tenant, wherein the Tenant stated they would serv e the hearing information to the Landlord in person, though this did not happen. The Landlord also described the handling of mail in their workplace – using the address they provided to the Tenant on the 10-Day Notice – is left with a receptionist who then forwards it to the addressee.

The Landlord stated they did not receive any evidence from the Tenant. The Tenant in the hearing could not state with certainty that they provided evidence to the Landlord for this Application.

I find the Tenant served the Landlord correctly, as required, on March 17 via registered mail. The Tenant cannot be faulted for a mail-receiving system at the Landlord's workplace that appears flawed. Conclusively, I find the Tenant served the Landlord as required on March 17.

In addition, the Residential Tenancy Branch communication to the Landlord about the Landlord's own separate Application, on March 18 via email, notes: "Your tenant(s) filed an application for dispute resolution and therefore we have scheduled your applications to be heard together." I find the Tenant completed service as required; moreover, the Residential

Tenancy Branch advised the Landlord about the Tenant's Application separately, to explain why the Landlord's document-only application was scheduled as a live hearing.

I find the Tenant did not serve evidence to the Landlord. I find the evidence the Tenant provided – involving their work credentials – is of marginal importance in this hearing concerning rent payments leading to the 10-Day Notice. I give this evidence that the Tenant provided to the Residential Tenancy Branch no consideration in this hearing.

Landlord's Service of Notice of Dispute Resolution Proceedings and evidence to the Tenant

In the hearing, the Tenant also stated that they did not receive a Notice of Dispute Resolution Proceedings from the Landlord. The Tenant noted the discrepancy between their numbered street, and that of a similar address (i.e., ####A), for which the post office makes frequent errors in delivery.

I find every residential street address uses a postal code for this purpose. As well, eventually the registered mail made its way to the Tenant in any event.

The Tenant stated that they eventually retrieved the registered mail from the post office. This is shown in the registered mail tracking record using the number the Landlord provided in their evidence. The Tenant retrieved the registered mail on April 11, after the Landlord delivered the documents on March 20, and the post office leaving a notice card on March 23.

I find the Tenant not credible on their statement that they received nothing for this hearing notifying them of the Landlord's Application. The record of delivery plainly shows otherwise.

I find the Landlord served evidence to the Tenant for this hearing. I give the Landlord's evidence full consideration where necessary and relevant to the issues herein.

Issues to be Decided

- Is the 10-Day Notice valid? If valid, is the Landlord entitled to an Order of Possession?
- Is the Landlord eligible for recovery of the Application filing fee?

Background and Evidence

I have reviewed all of the evidence, including the testimony of the parties in the hearing, but I shall refer only to what I find relevant to my decision.

The agreement between the parties, as provided in the copy submitted bv the Landlord into evidence, shows the tenancy starting on November 1, 2018. This was an updated agreement made in 2018, after the tenancy started previously in 2016 as recalled by the Tenant in the hearing.

The Tenant initially paid $1,400 in rent; over the course of the tenancy this increased to $1,448.27 per month, as shown in the ledger the Landlord provided in the evidence. The tenancy agreement is clear that rent payment is on the 1st of each month.

The tenancy agreement shows the Tenant paid a security deposit of $675.

In the evidence, the Landlord provided a ledger for the latter part of 2024, and into March 2025:

- November 2024: etransfer of $1,448.27 on November 2
- December 2024: etransfer of $248.27 on November 27, and $1,200 on December 1
- January 2025: etransfer of $1,448.27 on January 2
- February 2025: etransfer of $1,448.27 on February 7

The Landlord served the 10-Day Notice to the Tenant via registered mail on March 4, 2025. To show this, the Landlord provided a copy of the registered mail tracking number on their receipt from the post office.

The 10-Day Notice, signed by the Landlord on March 4, 2024, sets out that the Tenant did not pay the rent amount of $1,448.27 on March 1, 2025. The Landlord provided the tenancy-end date of March 19, 2025.
The Tenant completed this Application at the Residential Tenancy Branch to challenge this 10-Day Notice on March 13, 2025.

The Tenant paid the March 2025 rent on March 19, as stated by the Landlord in the hearing. For April, the Tenant paid $1,400 on March 26, and the remaining $48.27 on April 1.

In the Landlord's email evidence is their message from the Tenant on March 19, 2025, in which the Tenant states they will be sending the rent on this date. In the hearing, the Tenant stated they recalled this message to the Landlord.

The Tenant in the hearing set out that they performed extra work at the rental unit in order to maintain its structural integrity. The Landlord acknowledged the need for work; however, they recalled differently on their knowledge about the need for a contractor. The Tenant notified the owner – not the Landlord's agent who appeared in the hearing – that they would deduct rent amounts from March 2025 rent for this work performed. The Tenant acknowledged that they did not provide invoices that they had prepared for this hearing, those which they previously provided to the owner for this work performed.

The Landlord in the hearing stated they did not know that money was being deducted from March rent for this reason; however, they did underline that in their conversation with the owner, the owner was clear that they wanted to end this tenancy for the reason of late rent payment in March 2025. They had no communication from the owner about rent being reduced in March 2025 for the reason of repairs, and noted they received no evidence of the charges/agreement. They admitted that, if the Tenant was withholding rent for repairs undertaken, then it was confusing why the Tenant would later just pay the rent on March 19.

Analysis

The *Act* s. 26 strictly requires a tenant to pay rent when it is due under the tenancy agreement, whether or not a landlord complies with the legislation and/or tenancy agreement, unless a tenant has some authorization under the *Act* to deduct all/part of the rent.

The *Act* s. 46 provides that, upon receipt of a 10-Day Notice, a tenant must within 5 days pay the full amount of rent owing, or dispute by filing an application at the Residential Tenancy Branch. If a tenant does not pay arrears or dispute, they are conclusively presumed (as per s. 46(5)) to have accepted that the tenancy will end.

In this tenancy, the Landlord served the 10-Day Notice to the Tenant via registered mail on March 4. I deem service via this method complete to the Tenant on March 9, as per s. 90 of the *Act*. The Tenant applied for this hearing on March 13, 2025; therefore, I find the conclusive presumption part of s. 46 does not apply in this scenario.

I find the Tenant credible that they had some approval from the Landlord – specifically, the owner -- for a deduction of rent amounts for March because of their completed work. In this hearing, the burden of proof was on the Landlord, and they did not provide sufficient evidence to show otherwise. I find the Landlord presented a gap in their communication with the owner, and the owner was not in attendance at the hearing to explain the situation otherwise. I find

the Landlord did not meet the burden of proof to show that the Tenant was not authorized to withhold rent in March 2025 by reason of some repairs undertaken.

I find the Tenant completed rent payment to the Landlord for March 2025 – the fact that they ultimately did so, I find, does not undermine their account of wanting to be reimbursed for work they completed at the rental unit. Again, the burden of proof in an end-of-tenancy situation is on the Landlord, and the Landlord did not provide categorically via the owner that they wanted the tenancy to end.

On this basis, I cancel the 10-Day Notice served to the Tenant by the Landlord on March 3, 2025. There is an apparent gap in communication between the owner-Tenant-Landlord, and the Landlord did not prove clearly that the owner had no communication with the Tenant about reimbursement of any sort.

Conclusion

I order the 10-Day Notice cancelled; I grant the Tenant's Application for its cancellation. The 10-Day Notice is of no force or effect. The Landlord was not successful in this hearing; therefore, I grant no recovery of the Application filing fee.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 22, 2025

Residential Tenancy Branch