

## **DECISION**

### **Introduction**

This hearing dealt with an application filed by both the Tenant and the Landlord under the Residential Tenancy Act (the “Act”):

The Tenant applied for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under section 46 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord applied for:

- an Order of Possession based on unpaid rent based on sections 46 and 55 of the Act
- a Monetary Order for unpaid rent based on section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant based on section 72 of the Act

The Landlord attended the hearing.

The Tenant attended the hearing with JF, their brother, attending as their advocate.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

After some discussion, both parties acknowledged receipt of the other's Proceeding Package. On that basis, I find that the parties were sufficiently served with the others' Proceeding Packages based on section 71(2) of the Act.

### **Issues to be Decided**

Is the Tenant entitled to cancellation of the 10-Day Notices for unpaid rent? If not, is the Landlord entitled to an Order of Possession and Monetary Order for unpaid rent?

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

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

## **Preliminary Matters**

Upon review of the parties' applications and after some discussion with the parties, it became clear that the Landlord issued three 10-Day Notices based on alleged unpaid rent in the amount of \$2,460.00 for the months of April, May and June 2025 on June 5, 2025. The 10-Day Notices were attached to the door of the rental unit and are deemed received on June 8, 2025. On June 13, 2025, the Tenant applied to dispute these 10-Day Notices.

It became apparent during the hearing, that the Landlord mistakenly believed that the withdrawal of a deficient application for dispute resolution effectively withdrew 10-Day Notices.

As a result, on June 23, 2025, the Landlord issued a second set of 10-Day Notices to the Tenant, also attaching these notices to the door of the rental unit. These 10-Day Notices are deemed received on June 26, 2025.

While the Landlord is mistaken in their belief that the withdrawal application for dispute resolution impacts the validity of a 10-Day Notice, given that the Landlord issued a second set of 10-Day Notice on June 23, 2025 for the same reasons as the 10-Day Notices issued on June 5, 2025, I find it reasonable for the sake of clarity to exercise my authority under section 62 of the Act and cancel the 10-Day Notice dated June 5, 2025. Accordingly, the 10-Day Notices dated June 5, 2025, are cancelled and of no force or effect.

Furthermore, given the confusion the Landlord created by issuing the second set of 10-Day Notice for the same reasons as the first, I find it reasonable to amend the Tenant's application for dispute resolution to an application to cancel the 10-Day Notices issued June 23, 2025.

## **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.

The Tenant testified that they have resided in the rental unit for approximately 21 years. The Landlord testified that they purchased the rental unit in 2022. The Landlord produced a tenancy agreement between the Tenant and a previous owner of the rental property dating back to 2007. The parties agreed that the Tenant was notified when the Landlord purchased the rental unit.

The Tenant testified that they paid a security deposit in the amount of \$325.00 to a previous landlord which is consistent with the tenancy agreement submitted by the landlord. The parties agree that monthly rent is \$820.00, due on the first day of the month.

The Tenant submitted a decision of this office dated November 5, 2024. The file number of this decision is recorded on the cover page of this decision. In the November Decision, the Arbitrator ordered repairs to the rental unit as follows:

The Tenant's application is granted for an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act. As noted above, the Landlord must complete the following before December 31, 2024:

- Coordinate appropriate qualified pest management professionals to treat the Tenant's Unit,
- Coordinate appropriate qualified tradespersons to finish restoring the Tenant's Unit.
- Provide at least 4 days written Notice to the Tenant's Brother and the Tenant in advance of the qualified professionals attending to the Tenant's unit.

Relevant to the matter of rent, the Arbitrator ordered:

I grant the Tenant \$2,300.00 in compensation as a retroactive rent reduction under the sections 32, 65, and 67 of the Act, and because this tenancy is ongoing, I authorize the Tenant to *withhold payment of rent* under section 26 of the Act, until this amount is compensated in full to the Tenant.

- Order for retroactive rent reduction \$2,200.00
- Authorization to recover the costs of applying for this application \$100.00

I Order under section 65 of the Act that the Tenant's monthly rent is reduced to \$520.00 from December 2024 until the Tenant's Brother is satisfied that all ordered repairs have been completed.

In addition to these Orders, the Arbitrator provided a *potential* schedule to withhold rent. The Arbitrator notes that the potential schedule “assumes that all repairs are completed as required by December 2024, and that rent return to \$820.00 by January 2025”.

The parties agree that based on the November order, the Tenant withheld rent in December, January, February and March.

The parties further agreed that on June 23, 2025, the Landlord served the Tenant with three 10-Day Notices by posting those notices to the door of the rental unit. The Landlord submitted copies of the 10-Day Notices into evidence. Collectively, the 10-Day Notices allege that the Tenant has failed to pay rent that in the amount of \$2,460.00 that was due on April 1, May 1 and June 1, 2025.

The Landlord testified that the Tenant paid \$440.00 toward rent for the month of April, made no payment toward rent for the month of May and paid rent in the amount of \$520.00 for the month of June 2025; however, the Landlord alleged that this rent was paid very late in the month.

The Tenant agreed that they sent the Landlord a cheque in the amount of \$440.00 for rent for the month of April. The Tenant disputed that they did not pay rent for the month of May indicating that it is their practice to mail the Landlord a cheque for rent for the following month on the 23<sup>rd</sup> of the previous month. The Tenant testified that they paid rent for the months of May and June in this manner. The Tenant further noted that they paid rent in the amount of \$520.00 for the months of May and June because the Landlord has not completed the repairs as ordered in the November Decision.

Regarding the repairs, the Landlord testified that they do not have the ability to complete the repairs as the building is a strata-run property and many floors of the building are infested with bed bugs. With that said, the parties agreed that the Tenant’s rental unit was sprayed for bed bugs on May 29, 2025.

The Tenant testified that no maintenance has been completed in their rental unit to repair the damage caused by the flood which took place in January 2024. The Tenant testified the required professionals will not attend the rental unit to complete the work until it is confirmed that the bed bugs have been eradicated. The Landlord disputed this, but did not suggest they have made any effort to coordinate the appropriate qualified tradespersons to restore the Tenants rental unit as order in the November decision.

The Landlord is seeking an Order of possession and Monetary Order.

## **Analysis**

**Is the Tenant entitled to cancellation of the 10-Day Notices for unpaid rent? If not, is the Landlord entitled to an Order of Possession?**

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*. A notice to end tenancy given under this section must comply with section 52 (form and content) of the Act.

Upon receipt of a notice to end tenancy issued under section 46(1) of the Act, a tenant has 5 days to either pay the overdue rent or file an application disputing the notice. Where a tenant applies to cancel a 10-Day Notice to End Tenancy, the onus falls to the Landlord to prove that the 10-Day Notice issued for a valid reason.

As discussed in the Preliminary Matters section of this decision, the Tenant's application is amended to apply for cancellation of the relevant 10-Day Notices.

For the following reasons, I find that the Landlord has failed to meet the onus which is upon them to prove on a balance of probabilities that the Tenant failed to pay rent that was due on April, May or June 2025 as alleged in the 10-Day Notice.

The consistent evidence of the parties is that based on the November Decision, the Tenant withheld rent for the months of December, January, February and March.

In the November Decision, the Arbitrator provided a potential schedule to the parties to ensure that the compensation awarded to the Tenant (\$2,300.00) would be recovered by way of the Tenant withholding rent. However, I do not find the scheduled helpful because the Arbitrator clearly stated in the decision that the schedule assumed that all repairs are completed as required by December 2024, and that rent return to \$820.00 by January 2025.

However, this is not the case. Based on the testimony and evidence of the parties, I find the Landlord has failed to comply with the orders stated in the November Decision by December 2024, and required repairs to the rental unit remain outstanding.

As the repairs were not completed by December 2024, I find that the Tenant lawfully withheld the reduced rent amount of \$520.00 for each of these months. Therefore, by April 1, 2025, the Tenant had been compensated \$2,080.00 (4 x \$520.00) toward the \$2,300.00 Order. What this means is that on April 1, 2025, rent was due in the reduced amount of \$300.00 ( $\$2,300.00 - \$2,080.00 = \$220.00$ ) ( $\$520.00 - \$220.00 = \$300$ ) for April.

The parties agree that the Tenant paid \$440.00 toward rent for the month of April, which based on the foregoing supports that the Tenant overpaid rent for this month by \$140.00.

Further to this, I find that rent was due only in the reduced amount of \$520.00 for the month of May and June 2025 and not \$820.00 as alleged by the Landlord on the 10-Day Notices.

The parties disagreed as to whether any amount of rent was paid for the month of May and when rent was paid for June. However, as previously discussed the Landlord bears the burden to prove that the 10-Day Notices were validly issued, yet they have provided no evidence such as rent ledger, bank statements, copies of rent cheques that were received or rent receipts to support that the Tenant failed to pay rent for the month of May or June.

Moreover, the allegation that the Tenant was required to \$820.00 for either of these months is entirely unsupported by the evidence given that the Tenant has the lawful authority to withhold \$300.00 until such time as the repairs ordered in the November Decision are completed to the satisfaction of the Tenant's brother JF, which up to and including the date of this hearing, they are not.

For these reasons, I find the Landlord has failed to meet the burden which is upon them to prove that the 10-Day Notices issued were not issued for a valid reason. As a result, I find in favour of the Tenant and order that the 10-Day Notices issued June 23, 2025, are cancelled and of no force or effect. Accordingly, the Landlord's application for an Order of Possession based on unpaid rent is dismissed without leave to reapply. This tenancy continues until such time as it is ended in accordance with the Act.

It is recommended that the parties review their records to ensure that rent at the reduced amount has been paid for the months of May and June and to ensure that no overpayment has been made.

Should the Landlord determine there is rent outstanding for either of the months in question or moving forward, they are at liberty to issue one 10-Day notice stating the correct outstanding amount owed on the date the Notice is issued. The Tenant must respond to the Notice by either paying any outstanding amount or disputing the Notice in accordance with section 46 of the Act.

Should the Tenant discover that rent has been over paid, they may request a refund from the Landlord. Should the Landlord decline, the Tenant may make an application for dispute resolution to re-coup any overpayment that is discovered.

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

The Landlord did not provide sufficient evidence to prove what if any amount of rent is outstanding. Accordingly, the Landlord's application for a Monetary Order for unpaid rent under section 67 of the Act is dismissed without leave to reapply.

### **Is the Tenant entitled to an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act?**

I find the Tenant's application regarding repairs to the rental unit has previously been adjudicated and the matter decided in the November Decision. Thus, the Tenant's application is *res judicata* – a matter already decided upon by a competent decision maker– and, on that basis, I decline to re-hear it.

Nevertheless, I find that the orders regarding the reduction of rent made in the November Decision remains in effect. Accordingly, per the November decision rent is payable in the amount of \$520.00 until such time as the Tenant's brother is satisfied that all ordered repairs have been completed. For clarity, the ordered repairs are as follows:

The Tenant's application is granted for an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act. As noted above, the Landlord must complete the following before December 31, 2024:

- Coordinate appropriate qualified pest management professionals to treat the Tenant's Unit,
- Coordinate appropriate qualified tradespersons to finish restoring the Tenant's Unit.
- Provide at least 4 days written Notice to the Tenant's Brother and the Tenant in advance of the qualified professionals attending to the Tenant's unit.

Based on the discretion afforded to me, under section 62 of the Act, I order that should the parties disagree as to the satisfactory completion of the ordered repairs and/or the reinstatement of rent to the original amount, the Landlord must make an application for dispute resolution to clarify the matter.

### **Is the Landlord entitled to authorization to recover the filing fee for this application from the tenant?**

As the Landlord was not successful in their application, I find that they are not entitled to authorization to recover the filing fee for this application from the tenant under section 72 of the Act.

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

As the Tenant was successful in their applications, I find that they are entitled recover the filing fee for this application from the landlord. In accordance with the off-setting provisions of section 72 of the Act, I order that the Tenant may withhold \$100 from ONE future payment of rent.

**Method of Service**

To avoid complications related to the Tenant's ability to appropriately respond to documents provided or served by the Landlord, I recommend that the Landlord provide the Tenant's brother JF with copies of the same as it is evident to me that JF assists the Tenant in managing their tenancy.

The parties are advised that any decisions regarding service in future disputes will be addressed on a case-by-case basis and the parties should comply with the service requirement of section 88 and 89 of the Act.

**Conclusion**

The Tenant's application for cancellation of the Landlord's 10-Day Notice under section 46 of the Act is granted. This tenancy continues until such time as it is ended in accordance with the Act.

The Tenant's application for an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act is dismissed without leave.

The Tenant is authorized to withhold \$100 from ONE future payment of rent.

The Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed without leave to reapply.

The Landlord's application for an Order of Possession based on unpaid rent based on sections 46 and 55 of the Act is dismissed without leave to reapply.

The Landlord's application for a Monetary Order for unpaid rent based on section 67 of the Act 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: July 17, 2025

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Residential Tenancy Branch