



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNR, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities as well as to recover the filing fee for this proceeding. The hearing started as scheduled at 11:00 a.m., however by 11:10 a.m., the Tenant had not dialed into the teleconference and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Are there arrears of rent and utilities?
2. Is the Landlord entitled to end the tenancy?

Background and Evidence

This month to month tenancy started on July 15, 2008. Rent is \$1,000.00 per month payable on the 15th day of each month plus gas and electricity.

The Landlords claimed the Tenant was in arrears of utility payments of \$728.61 and had rent arrears of \$975.00 (that had accumulated since August, 2008) as of February 1, 2009. Consequently, on February 10, 2009, the Landlords posted a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated February 10, 2009 on the Tenant's door. The Landlords said they reduced the amount of the arrears by \$90.00 to account for a \$40.00 payment the Tenant made in cash on December 17, 2008 and for \$50.00 the Tenant said she paid on November 16, 2008 (which the Landlords did not admit). The Landlords admitted that a written demand for the utilities was not made until February 10, 2009 and was therefore not deemed unpaid rent under the Act for a further 30 days.

The Landlords said the Tenant made a payment of \$1,688.71 on March 7, 2009 for which she was issued a receipt "for use and occupancy." The Tenant paid the balance of the rent and utility arrears of \$15.00 on March 29, 2009.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the amount set out on the Notice or apply for dispute resolution. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or in this case, on February 13, 2009. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount within 5 days, or no later than February 18, 2009.

Although the Tenant made her application for dispute resolution on February 12, 2009, I find that there were arrears of rent owing on February 10, 2009 that were not paid until March 7, 2009 (at the earliest). Consequently, I find there are no grounds for cancelling the Notice to End Tenancy and the Tenant's application is dismissed. The Landlord did not apply for any orders.

Conclusion

The Tenant's application is dismissed. The 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated February 10, 2009 will stand.