



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR

Introduction

This hearing was scheduled for 9:00 a.m. on this date to hear the tenant's application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent and Utilities* (the Notice). The tenant did not appear at the hearing by 9:10 a.m. and I dismissed the tenant's application without leave to reapply. The landlord did appear at the hearing.

Background and Evidence

The landlord testified that the parties have reached an agreement that the tenant is permitted to stay in the rental unit until June 2009 as long as she pays the base rent of \$800.00 per month.

As evidence for the hearing a copy of the Notice was provided. The Notice indicates that \$645.00 in utilities was not paid by March 30, 2009 despite a written demand for utilities on March 30, 2009. The landlord enquired about the enforceability of the Notice issued to the tenant in the event the tenant fails to pay rent as agreed.

Analysis

Where a tenant's application to cancel a Notice is dismissed and a landlord requests an Order of Possession, the Order of Possession will be granted if the Notice is otherwise enforceable. I considered whether the Notice is enforceable pursuant to the landlord's enquiry.

Where a tenant is required to pay the landlord utilities, the requirement to pay utilities must be a term in the tenancy agreement. I was not provided a copy of the tenancy agreement for the hearing. In addition, the landlord must provide the tenant with written demand for payment and give the tenant 30 days to pay the utilities before the landlord can consider the utilities as unpaid rent. I was not provided a copy of the written demand for utilities. Even if written demand for utilities was made, upon review of the Notice, I do not find that the landlord gave the tenant 30 days to pay the utilities before issuing the Notice to End Tenancy. Therefore, I do not find the Notice enforceable and I do not grant the landlord an Order of Possession for the Notice served upon the tenant that is dated March 30, 2009.



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Should the tenant fail to pay rent in the future, the landlord is at liberty to issue another *10 Day Notice to End Tenancy for Unpaid Rent and Utilities*. To enforce payment of utilities, the landlord is at liberty to issue a written demand to the tenant and issue a Notice to End Tenancy if the tenant does not pay the utilities within 30 days of receiving the written demand.

Conclusion

The tenant's application was dismissed without leave. I did not grant an Order of Possession to the landlord as I found the issuance of the Notice did not comply with the requirements of 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 *Residential Tenancy Act*.

Dated: April 28, 2009.

Dispute Resolution Officer