

DECISION

Dispute Codes CNR

Preliminary Issues

The hearing commenced at 1:28 p.m. based on the Dispute Resolution Officer's clock. When the Dispute Resolution Officer signed into the hearing the landlord was already present but not the tenant. After a few minutes the Dispute Resolution Officer dismissed the landlord and just as the landlord was hanging up the tenant signed into the hearing.

The Dispute Resolution Officer was able to contact the landlord, who dialled back into the hearing and the hearing was conducted as previously scheduled with both the landlord and tenant present.

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a notice to end tenancy for unpaid utilities.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on April 30, 2009. Mail receipt numbers were provided in the verbal testimony. The landlord was deemed to be served the hearing documents on May 5, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to an Order to cancel a notice to end tenancy under section 46 of the *Residential Tenancy Act*

Background and Evidence

The tenancy involved renting a modular home located in a mobile home park. The landlord is the owner of the modular home who rented the home to the tenant on a month to month tenancy beginning on April 1, 2008. The tenancy ended May 15, 2009. Rent was payable in the amount of \$1,100.00 due on the 1st of each month.

The landlord testified that after issuing the tenant with a 10 Day Notice to End Tenancy on April 23, 2009, his wife and daughter went to check on the rental unit on May 22, 2009 at 9:10 a.m. and found the front door wide open and the tenant and her possessions were gone. The landlord advised that the tenant vacated the rental unit without notice and that she did not return the keys for the rental unit.

The tenant confirmed that she has vacated the rental unit and her request to cancel the notice to end tenancy is no longer applicable. The tenant requested that the Dispute Resolution Officer review the matter of the landlord issuing a 10 Day Notice to End Tenancy for unpaid utilities when the tenancy agreement stipulates that utilities were included in the monthly rent.

The tenant testified that the landlord's wife approached her in approximately September of 2008 to advise her that the electric bill was substantially higher than when the previous tenant leased the rental unit. The tenant stated that at the end of the conversation the female landlord told the tenant that they would leave the issue of utilities until the spring and review it again then. The tenant testified that sometime in March 2009 the landlord called again stating that the tenant would need to provide money towards the electricity cost and that the tenant had discussed the possibility of contributing some money towards the bills but that nothing was formally agreed to. The tenant stated that the next thing she knew she was being issued the 10 Day Notice to End Tenancy for not paying utilities.

The landlord testified that over the course of the tenancy the landlord had several conversations with the tenant about the increased electricity costs and the tenant's use of an older air conditioning unit that the tenant had installed in the rental unit. The landlord testified that at one point they hired a contractor to check out the electricity usage at the rental unit, as they felt it was unusually higher than normal, and the contractor reported to the landlord that there was a fifth wheel trailer plugged into the rental units electrical outlet which was consuming a large amount of electricity.

The landlord testified that electricity was originally included in the tenancy agreement but that at the beginning of April 2009 the tenant verbally agreed to pay \$800.00 towards the electrical bill as she agreed she was using a lot of electricity. The landlord testified that there was no written agreement with the tenant to change the tenancy agreement to have the tenant responsible for the cost of utilities.

Analysis

The tenant has withdrawn her request for an Order to Cancel a Notice to End Tenancy for unpaid utilities, as the tenancy was ended on May 15, 2009.

In regards to the landlord's claims relating to how and when the tenant vacated the rental unit, I am not able to neither hear nor consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. That being said, I must point out that the landlord is at liberty to make their claims in a separate application if the landlord wants to pursue a claim under the *Residential Tenancy Act*.

With respect to the landlord charging the tenant for utilities, Section 14 of the *Residential Tenancy Act* stipulates that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. Based on the documentary evidence and testimony before me, I find that there was no agreement between the landlord and tenant to change the tenancy agreement to have the tenant responsible for the cost of utilities.

Conclusion

I HEREBY FIND that there was no agreement between the landlord and tenant to change the original tenancy agreement to make the tenant responsible for the cost of utilities.

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: May 28, 2009.

Dispute Resolution Officer