

## **DECISION**

Dispute Codes      CNC, OLC, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a one month Notice to End Tenancy, for an order for the Landlord to comply with the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note the Tenant had two witnesses appear at the hearing, however, it was not necessary to receive their testimony, due to the testimony and evidence of the Tenant.

### Issues(s) to be Decided

Is the one month Notice to End Tenancy valid or should it be cancelled?

Is the Landlord not complying with the Act or tenancy agreement?

### Background and Evidence

This tenancy began December 1, 2003, with the parties signing a written tenancy agreement on November 15, 2003. The agreement indicates that the rent does not include hydro and the Tenant must pay for this himself.

The Tenant testified that since the outset of the tenancy he has been unhappy with the way the Landlord calculates the hydro bill. He testified he had complained to the Landlords about his hydro bill some years before, but he did not file to dispute the hydro bills until after the February 2010 hydro bill became due.

The parties agree that in February of 2010, the Tenant refused to pay the hydro bill as calculated by the Landlord. The Landlord then issued the Tenant a one month Notice to

End Tenancy for repeated late payment of rent, served on March 29, 2010, with an effective date of April 30, 2010.

In support of the Notice to End Tenancy, the Landlords testified that the Tenant is always late paying his rent. They testified that he once called and asked them to delay depositing his rent cheque as he did not have the funds. They were unable to testify to the exact date of this request from the Tenant, but acknowledged it was some time ago. Nevertheless, since that call they have not deposited his rent cheques until a few days after the first of the month, usually on the seventh day of the month. They testified they did this to avoid the cheque being returned due to insufficient funds in the Tenant's account. The Landlord testified that she did not recall if any of his cheques had ever been returned "NSF", but thought it might have happened once. She recalled another time in the late summer or early fall of 2009 that the Tenant called and asked them not to cash his rent cheque as he changed bank accounts.

The Landlords also testified as to the method they use to calculate the Tenant's hydro bill. The Landlords have installed private meters which they read two or three days before the end of the month. The usage is calculated and the hydro rate applied and attributed to each renter and copies of the hydro bill amounts due are then supplied to the Tenant and other occupants of the property, and the actual hydro bills are supplied later and reconciled.

The Tenant questioned the accuracy of the meters and testified that he did not think it could be accurate that he paid a larger bill for his rental unit than others did for theirs. He testified that a different unit, which is bigger and occupied by two people, sometimes pays less for hydro than he does for his smaller unit. The Landlord replied that the Tenant often had his girlfriend over for two months or more at a time, and this may account for the extra usage.

### Analysis

Based on the foregoing, the testimony and evidence and on a balance of probabilities I find as follows:

I find that the Landlords had insufficient evidence to prove that the Tenant has paid his rent late on three occasions during the past several months. The fact the Landlords have chosen to delay depositing his rent cheques by several days does not mean the Tenant has been late paying rent. Therefore, I find that the one month Notice to End Tenancy for repeated late payment of rent is not valid, and that the Application of the

Tenant is allowed on this one issue, and **I order that the Notice is cancelled and of no force or effect.**

**As for the Tenant's allegations regarding the hydro bills, I dismiss this portion of his claim**, as the Tenant had insufficient evidence to show that the Landlord has not calculated the hydro bills correctly, or that the meters are inaccurate, or the hydro bills are unconscionable. There is insufficient evidence that the Landlord should be ordered to calculate or charge the Tenant differently for hydro in the rental unit than what has occurred for the past seven years.

Furthermore, I find that the Tenant has accepted the hydro bills for the past seven years, and has supplied no evidence to show he disputed the bills in writing to the Landlords, prior to this Application. Therefore, I find the Tenant may not now dispute these bills because of the legal principle known as *estoppel*. This principle can be explained as when the parties to a contract proceed on the basis of an underlying assumption (either of fact or of law, and whether due to misrepresentation or mistake, which makes no difference), on which they have conducted the dealings between them, neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. In this case, it would be unfair and unjust to allow the Tenant to go back on hydro bills for the seven years of the tenancy.

As the Tenant has been only partially successful in his Application, I award him only a portion of the filing fee for the claim. The Tenant may deduct \$25.00 from one month of rent.

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 30, 2010.

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Dispute Resolution Officer