



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for unpaid rent or utilities, to allow the Tenant to reduce rent for repairs, services, or facilities agreed upon but not provided, and to recover the cost of the filing fee from the Landlord for this application.

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 January 19, 2011. Mail receipt numbers were provided in the Tenant's verbal testimony. The Tenant testified he was watching the tracking of the package and when the Landlord failed to pick up the registered mail he served him personally with the package on approximately January 29, 2011. Based on the aforementioned I find the Landlord was sufficiently served with the notice of dispute resolution documents.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If not, should the 10 Day notice to end tenancy for unpaid utilities be upheld and the Landlord granted an Order of Possession as a result of that breach?
3. Are the terms of the tenancy agreement pertaining to the responsibility and payment of utilities clearly outlined on the tenancy agreement?
4. Has the Tenant applied to cancel the 2 Month Notice to End Tenancy, and is it a valid notice?

Background and Evidence

The Tenant testified that he did not receive a copy of the Landlord's evidence. The Landlord confirmed he did not provide a copy to the Tenant. The Landlord did however receive copies of the Tenant's evidence.

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective November 1, 2010 which is set to switch to a month to month tenancy after November 1, 2011. Rent is payable on the first of each month in the amount of \$1,100.00. The cost of hydro and natural gas are not included in the rent. The Tenant paid \$550.00 on November 1, 2010 as the security deposit.

The rental unit consists of the upper floor of a two level house and has three bedrooms and a common area in the basement. The basement consists of another three bedroom suite.

The Tenant testified that at the onset of his tenancy the Landlord told him that he would be responsible to pay utilities in the amount of "whatever they used for the services". The Landlord insisted he put the hydro account in his name, which he did. He later received a notice from the natural gas company stating the account had not been registered and requested the owner put the natural gas account in his name. He gave this notice to the Landlord to get the account set up.

After receiving the first hydro bill on December 22, 2010, he sat down at the computer with the Landlord to determine how much the Landlord's responsibility was. They determined that the Landlord would owe \$240.63 because he has had his trailer plugged in the entire time. He receives the bills on line so he wrote the amount owed on a paper and gave it to the Landlord. The Landlord refuses to pay his share of the hydro bill.

The Landlord has lived at the property from the onset of the tenancy doing renovations in the lower suite and has had a 26 – 30 foot trailer plugged in all this time. He has also had another person residing at the property, who has a vehicle stored there and receives mail there. There is nothing specific in the tenancy agreement about how much they will have to pay so the Tenant assumed it would be half of the bill. The basement suite is the same size as his with three bedrooms.

Then the Landlord demanded payment for the natural gas bill and has not yet provided the Tenant with a copy of the bill. The Tenant is assuming that he would only have to pay half of the natural gas bill and is willing to pay it once he sees a copy of the bill.

The Tenant is also concerned about how to pay his February 2011 rent. He has always paid in cash and the Landlord has provided him a receipt. Then on February 2, 2011 the Landlord called him and asked him to slip the money under the door in the basement suite. The Tenant refused to do so because it is \$1,100.00 in cash and how is he to get his receipt for this payment. The Tenant stated he was concerned about what would happen if the money went missing. He wants to pay his rent and his fair share of the utilities and wonders why he would be required to put utilities in his name when it is the Landlord's house. He feels the 10 Day Notice to End Tenancy which was issued for unpaid utilities should be cancelled because he has never seen a bill for natural gas nor has the Landlord paid his share of the hydro.

The Tenant confirmed he had made an error on his application and requested to withdraw his request for reduced rent for repairs, services or facilities agreed upon but not provided.

The Landlord testified he issued the 10 Day Notice to End Tenancy for unpaid utilities and served it registered mail on January 14, 2011. He later served a 2 Month Notice to End Tenancy for Landlord's use with an effective date of March 15, 2011. He argued that the Tenant was told at the onset that electricity and heat were not included in his rent. He states they had a verbal agreement back in October 2010 that the Landlord would pay 30% of the utilities and the Tenant would pay 70%. He lives in his trailer which is plugged into the rental unit and is using the basement suite while he is renovating. He should not have to pay for hydro and natural gas as there is nothing plugged in down in the basement as he is renovating.

The Landlord purchased the house with his brother as of September 1, 2010. He denied that he had someone else residing at the rental unit. His friend would come on occasion to visit but does not live there. He states he gave the Tenant a copy of the natural gas bill on January 24, 2011 so the 10 Day Notice is valid so he would like to request an Order of Possession.

The Tenant stated that they did not have a verbal agreement about splitting the utilities 30% - 70%. He would never agree to that with the basement being a three bedroom suite just like his upper suite. He agreed to be responsible for the utilities for upstairs and when he questioned the Landlord how that would work he was told it would be based on what they used.

The Landlord confirmed that all previous rent is considered paid in full and that he did ask the Tenant to place February rent under the door. He stated there was no rent to be paid for January 2011 because the Tenant did some work for the Landlord in exchange

for rent so that rent is paid in full. When I questioned the Landlord about how he expected to receive February 2011 rent he advised at that time that he has moved to another city. I asked when he had moved and he stated a few days ago. Then upon further clarification he stated he moved January 21, 2011. I asked what arrangements were made to receive rent payments as the Tenant needs to receive a rent receipt as soon as the cash is handed over and the Landlord did not reply. I asked if the Landlord would consider providing bank account information where the Tenant could deposit the rent and receive a bank receipt. At that point the Landlord stated he would pick up the rent that evening. I asked how he could do that if he was in the other city to which the Landlord replied, "I'm on my way home I'll be there tonight".

The female Tenant questioned where the Landlord really lived as he has been at the rental property every day.

A time was set for February 4, 2011 for the Landlord to attend the rental unit at 11:00 a.m. to pick up the February 2011 rent and provide the Tenant with a receipt and a copy of the natural gas bill. The Tenant will ensure he has the cash to give to the Landlord for rent and will provide him with a printed copy of the hydro bill.

I instructed both parties not to exchange money for the hydro and natural gas bills until they have received my written decision and orders.

Analysis

The Landlord confirmed he did not provide the Tenant with copies of his evidence in contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the applicant Tenant has not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

A significant factor in my considerations is the credibility of the Landlord's testimony. I am required to consider the Landlord's testimony not on the basis of whether it "carried the conviction of the truth", but rather to assess his testimony against its consistency with the probabilities that surround the preponderance of the conditions before me. I find that the Landlord contradicted his own testimony, several times during the hearing, first by stating he lived in the basement suite while renovating it, then stating he lived in his trailer which was plugged into the rental house. He later stated he was no longer

residing at the rental property because he had moved January 21, 2011, only to say "I'll be **home** tonight" when referring to how he was going to pick up the rent.

Section 46 (6) of the Act provides that a Landlord may end a tenancy if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment with a copy of the utility bill.

In this case I heard opposing testimony that the Landlord provided the Tenant with a copy of the utility bill on January 24, 2011. Even if that was the case the Landlord could not issue a 10 Day Notice to End tenancy until the bill remained unpaid for 30 days, as per section 46(6) above. Therefore the 10 Day Notice to end Tenancy issued January 8, 2011 was premature. I also note that the 10 Day Notice was issued on an old form which does not meet the requirements of form and content under section 52 of the Act.

Upon review of the 10 Day Notice to End Tenancy issued January 8, 2011, I find the Notice not to be completed in accordance with the requirements of the Act, and the 10 Day Notice is hereby cancelled.

The Tenant provided a copy of a 2 Month Notice to End Tenancy for Landlord's use in his evidence, which shows an effective date as March 15, 2011. Although the Tenant has not made application to dispute this 2 Month Notice I felt it necessary to confirm that the effective date is incorrect and would self correct to the end of the fixed term, November 1, 2011, as per section 53 of the Act. Section 49 (2)(c) states that a landlord may end the tenancy for landlord's use by giving notice to end the tenancy effective on a date that is not earlier than the date specified as the end of the tenancy, if the tenancy agreement is a fixed term tenancy agreement.

The evidence supports the rent does not include the cost of hydro or natural gas however it is not clear as to what percentage of the bills the Tenant is responsible for. In the presence of opposing testimony, I do not accept the Landlord's testimony that they had agreed to split the utilities 30% - 70%. Section 6 (3)(c) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. Based on the aforementioned I have hereby determined that the Tenant is to be responsible for 50% of the hydro after the December 22, 2010 bill, and 50% of natural gas costs from the onset of the tenancy.

I accept the testimony that the parties met and discussed the hydro usage of the first bill whereby they determined the amount of power consumed by the Landlord's trailer and

the use of power during the renovation of the basement. I accept that the Landlord is responsible for \$240.63 of the December 22, 2010 hydro bill. Based on the aforementioned, I hereby Order the Tenant to reduce his March 1, 2011 rent by \$240.63 to recover the cost of the Landlord's portion of hydro costs from the December 22, 2010 hydro bill, pursuant to section 67 of the Act.

The Landlord was required to provide the Tenant with a copy of the natural gas bill on February 4, 2011, at 11:00 a.m. Upon receipt of this bill the Tenant is required to pay the Landlord 50% of the total natural gas bill within 30 days of receiving a copy of the invoice.

I accept the Tenant's testimony that the Landlord insisted that he put the hydro bill in his name; which has now placed the Tenant in a precarious position of having to try to collect payment for the hydro bill from the Landlord. The collection of rent and utilities is the responsibility of a landlord and not a tenant. Therefore, I find the requirement to have the hydro bill in the Tenant's name to be unconscionable, and is therefore not enforceable pursuant to section 6(3)(b) of the Act. Based on the aforementioned I hereby Order the hydro bill to be placed in the Landlord's name effective immediately upon receipt of this decision. The Tenant is at liberty to provide the hydro company a copy of my decision and Orders in order to ensure the account is transferred as soon as possible.

The Tenant is responsible for 50% of any amounts of hydro that are not related to the December 22, 2010 billing which remain in his name prior to the account being transferred into the Landlord's name. This amount may be deducted from the Tenant's future rent, providing a copy of the bill is provided to the Landlord as soon as the amount is determined.

The division of utilities will need to be revisited if the basement suite becomes occupied and the Landlord continues to have a trailer(s) plugged into the rental property. If this occurs and the parties cannot agree on the division of hydro, in writing, then either party is at liberty to make application for dispute resolution to have the matter resolved.

The Tenant has been successful with his application, therefore I award recovery of the \$50.00 filing fee.

Conclusion

The 10 Day Notice to End Tenancy issued January 8, 2011 is **HEREBY CANCELLED** and is of no force or effect.

The effective date of the 2 Month Notice to End Tenancy for Landlord's use is hereby corrected to **November 1, 2011**.

The Landlord is **HEREBY ORDERED** to have the hydro account transferred into his name **IMMEDIATELY** upon receipt of this decision.

The Tenant is instructed to reduce his March 1, 2011 rent by **\$290.63** (\$240.63 hydro bill + \$50.00 filing fee).

The Tenant is at liberty to reduce his future rent to recover any residual amount for hydro between the December 22, 2010 bill and when the account is switched into the Landlord's name at 50% of the total amount, after the Landlord is provided a copy of the final bill.

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: February 07, 2011.

Residential Tenancy Branch