



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was convened by way of conference call to deal with the tenants' application for an order cancelling a notice to end tenancy for unpaid rent or utilities and to recover the filing fee from the landlord for the cost of this application. Both tenants and the landlord attended the hearing, however only one tenant testified. The landlord and the tenant each gave affirmed testimony and were given the opportunity to cross examine each other on their evidence, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

Background and Evidence

The parties agree that this fixed term tenancy began on May 1, 2010 and expired on April 30, 2011 and then reverted to a month-to-month tenancy. Rent in the amount of \$1,100.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$550.00. The rental unit is a suite in the upper portion of a house, and additional tenants reside in the lower suite.

The landlord testified that the utilities were in the name of these tenants for both units, and each were to pay 50%. The relationship of the tenants with the tenants in the lower level had deteriorated, and the parties had had a dispute with respect to the equitable share.

The landlord further testified that the tenants had asked the landlord to collect cash from them for the rent for June, 2011 rather than cashing a cheque. When the landlord went to collect the rent on June 1, 2011 no one was home and he was unable to reach them. The landlord spoke with the tenants in the lower level who were moving out. They told

the landlord that the upstairs tenants were moving as well. They also advised that the upstairs tenants were going to cut off the utilities, being gas and hydro.

The landlord testified that he deposited the tenants' rent cheque for the month of June, 2011 but it was returned by the bank for insufficient funds.

On June 2, 2011 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit. A copy was not provided for the hearing however the landlord testified that it contained an effective date of June 11, 2011.

The tenant testified that when the first moved into the rental unit, problems began. He stated that a verbal agreement existed that if the downstairs tenant didn't pay the utilities, the landlord would. A copy of the tenancy agreement was not provided for the hearing however the tenant testified that it states: "Heat/lights are to be paid by the upper suite residents. Failure to remain in good standing with the utilities companies in question will be treated as a failure to pay complete and timely rent and will result in an initiation of the eviction process."

The tenant further testified that the tenants in the lower level owed him \$748.00 for utilities. Copies of the bills were provided to the tenants in the lower level, and they have only paid two bills, in the amounts of \$164.00 and \$172.00. On March 1, 2011 they arbitrarily decided they should only pay 40%.

When asked by the landlord how the tenant kept track of what's owing and paid, the tenant responded that he writes those amounts on the bills. When asked if the tenant provides receipts, the tenant responded that he has some, but it's not been a contention until now. Copies of those bills were not provided for the hearing.

Analysis

The *Residential Tenancy Act* states that a landlord may issue a notice to end a tenancy for unpaid rent or utilities on any day after the day rent is payable under a tenancy agreement. The tenant may dispute the notice by filing an application for dispute resolution within 5 days of the date the notice was served on the tenant. In this case, I find that the notice to end the tenancy was deemed to be served 3 days after posting it to the door of the rental unit, or June 5, 2011. The tenants' application was filed on June 3, 2011, and therefore I find that the tenants have complied with the *Act*.

The tenant did not dispute the fact that rent remains unpaid for the month of June, 2011 in the amount of \$1,100.00.

The Residential Tenancy Policy Guidelines state that a term of a tenancy agreement requiring one tenant to be responsible for utilities for another unit that the tenant does not occupy may be a term that is unconscionable. Whether or not the tenants in the lower level felt that 50% was an equitable share, I find that the tenancy agreement entered into by these parties is clear. The Residential Tenancy Policy Guidelines also provide that if the tenants are not reimbursed by the other tenants, the landlord becomes responsible. Further, the landlord did not dispute the tenant's testimony that a verbal agreement existed between the parties that the landlord would be responsible for utilities unpaid by the lower level tenants. The landlord also did not dispute that a cost of the utilities are owed to the tenants and therefore, I find that the notice ought to be cancelled.

Since the tenants have been successful with the application, the tenants are entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby order the notice end tenancy be cancelled.

I further order that the tenants be permitted to deduct the amount of \$50.00 from rent payable to the landlord.

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: June 24, 2011.

Residential Tenancy Branch