



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes CNR, MNDC

Introduction

This hearing was convened in response to an application filed by the tenant seeking to cancel a Notice to End Tenancy for unpaid rent, a monetary order for compensation for damage or loss in the sum of \$500.00 and recovery of the filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Does the landlord have cause to end this tenancy because there is outstanding rent and/or utilities? Has the tenant met the burden of proving he is entitled to a \$500.00 monetary award and should the tenant recover the filing fees he paid for this application.

Background and Evidence

This tenancy began on May 15, 2007. There is no written tenancy agreement setting out the terms of this tenancy in particular, nothing in writing with respect to utilities. On June 17, 2011 the landlord served a 10 Day Notice to End tenancy for unpaid utilities. In that Notice the landlord seeks the sum of \$1,244.00 requested in a written demand made June 14, 2011. The tenant testified that all utilities had been paid. By way of proof the tenant submitted a receipt signed by the landlord on June 14, 2011 entitled "Receipt of Utility Portion" which states that the landlord confirms receipt of "...the balance utilities portion payment in full (Gas & Hydro) from KSC on this 14 day of June 2011. The payment received by me is for the mentioned address...Gas bills up to May 2011 and Hydro bills up to May 2011 = \$2,922.53."

The landlord responded that the receipt says it is for a "portion" of the utilities and this means that not all of the utilities owing had been paid in full; only a portion of them. The landlord testified that it is the tenant's responsibility to pay for one-third of the utilities. The landlord submits that the receipt submitted in evidence by the tenant is for utilities up to May 2011 and the utilities which are the subject of the 10 day Notice to End

Tenancy are for June 2011. The landlord says he does not receive the utility bills because, while they are in his own name, the invoices are sent to the tenant.

The tenant testified that the word "portion" refers to his share of the utilities as he is not responsible for the full amount of the utilities. The tenant testified that the parties worked out the tenant's portion of the utilities and the tenant paid the agreed amount of \$2,922.53 on June 14, 2011 for all utilities up to and including May 2011 and nothing more is owing. The tenant submitted that he does not know why the landlord issued a Notice to End Tenancy for \$1,244.00 more utilities on June 17, 2011.

With respect to the tenant's claim for \$500.00 in compensation the tenant seeks these sums to cover the costs he has incurred in travel time, etc to pursue this claim.

Analysis

With respect to non-payment of rent (utilities) the *Residential Tenancy Act* states:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The landlord has failed to show evidence that he provided the tenant with a written demand for the utilities. Further, in the Notice to End Tenancy the landlord says the utilities were due June 14, 2011 and the Notice is issued June 17, 2011. This is contrary to 46(6)(b) of the Act as set out above. I therefore set aside the 10 day Notice to End Tenancy. The effect of this decision is that the tenancy will continue as though no such Notice had been issued.

With respect to the tenant's claim for \$500.00 in compensation the tenant seeks these sums to cover the costs he has incurred in travel time, etc to pursue this claim I am not authorized to allow for costs other than recovery of the filing fee. I will therefore dismiss

the tenant's claim for \$500.00 however as the tenant has been successful in this claim, I will allow the tenant to recover the \$50.00 filing fee that he has paid. To realize this award I direct the tenant to deduct \$50.00 from his next rental payment.

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*.
