

DECISION

Dispute Codes: CNR; OLC; FF

Introduction

This hearing dealt with the Tenant's application cancel a *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* (the Notice) issued November 4, 2011; for an Order that the Landlords comply with the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlords.

The parties gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

Issue to be Decided

- Should the Notice issued November 4, 2011, be cancelled?
- Should the Landlords be ordered to comply with the Act, regulations or tenancy agreement?

Background and Evidence

The Landlords testified that the Tenants owe utilities in the amount of \$457.23 for water. The Landlords are concerned because any outstanding amount still owing on the water bill after December 31, 2011, will be added to their property taxes.

The Landlords testified that the Tenants put the utilities in their name without their knowledge or consent in April, 2011, at the beginning of the tenancy. The Landlords testified that since the water bill is generated every couple of months, they were unaware that this had happened until the end of June, 2011, when they realized they didn't get a bill.

The Landlords testified that the Tenants also changed the access code to the on-line bill. The Landlords testified that they went on-line to check the status of their water account and discovered that their access code did not work. They phoned the CRD and were provided access because they are the owners of the property.

The Landlords testified that they texted and left messages with the Tenants asking that the water bill be paid and that on October 25, 2011, they sent an email to the Tenant demanding the bill be paid. They testified that they had the water bill put back in their name just recently.

The Landlords submitted that the CRD was acting as their agent when they sent the Tenants bills and that the Tenant received the overdue bills at least 30 days prior to the date the Notice to End Tenancy was issued. The Landlords asked me to consider the intent of the Act, which they submit is whether the Tenants were aware of the fact that utilities were due and to give Landlords a vehicle to end a tenancy for unpaid utilities. The Landlord stated that this is particularly true because as of December 31, 2011, the outstanding amount will be added to their property taxes.

The Landlords requested an Order of Possession.

The Tenant denied putting the utilities in her name without the knowledge or consent of the Landlords. She testified that the Landlords told her at the beginning of the tenancy that the bills had to be in her name. The Tenant testified that the other utilities were also in her name and that she has been paying them directly to the other utility companies. She stated that she did not purposefully change the access code to the water account, and that it was automatically changed when she took over the account.

The Tenant testified that the water bill should have been paid, but that there are other occupants in the house in another suite and she does not believe it is fair that she should have to pay the whole bill and then go to the other occupants for their share. The Tenant testified that she pays the gas and electric bills and the other occupants reimburse her.

The Tenant testified that the Landlords did not give her written demand to pay the outstanding water bill until November 8, 2011.

Analysis

I do not accept the Landlord's submission that the CRD is the Landlord's agent when providing invoices for water bills. In any event, Section 46(6) of the Act states:

Landlord's notice: non-payment of rent

46 (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.

(emphasis added)

A copy of the tenancy agreement was not provided in evidence by either party however, both parties gave testimony that tenancy agreement required the Tenants to pay the utility charges, which is not specific with respect to whom the utilities are paid (for example, the Landlords or the utility companies). I do not accept the Landlord's argument that the Tenant was to leave the water bill in the Landlord's name. I accept that the Tenant acted reasonably in putting the water bill in her name, as she had with the hydro and gas bill.

I do not find that an invoice or bill from a utility company is a **written demand** for payment to the Landlord. The intent of Section 46(6) of the Act is to put a tenant on notice that failure to pay outstanding utilities entitles the Landlords to treat the unpaid utilities as unpaid rent and to end the tenancy.

Until such time as the utility account was replaced into the Landlord's name, I find that there was no agreement that the Tenant should pay the Landlord for this utility. Therefore, at the time of issuing the notice, the Landlord was not entitled to treat the unpaid water bill as unpaid rent and issue a 10 day Notice.

In light of the above, I cancel the Notice to End Tenancy issued November 4, 2011.

I make no finding with respect to the Tenant's submission during the Hearing that she should not be required to pay the full utilities and then collect the other occupant's share, as this was not part of the Tenant's Application for Dispute Resolution.

The Tenant's application for an Order that the Landlords comply with the Act, regulations or tenancy agreement lacks specificity. The Tenant does not indicate which section of the Act or regulation he wishes the Landlords to comply with, nor does he indicate in the "Details of Dispute" section of the Application what he is referring to. Therefore this portion of the Tenant's Application is dismissed.

I grant the Tenant's application to cancel the Notice to End Tenancy. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

I order that the Tenant bear the cost of filing the application.

Conclusion

The Notice to End Tenancy issued November 4, 2011, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

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: November 30, 2011.

Residential Tenancy Branch