



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a ten day notice issued on May 3, 2012.

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.

Issue(s) to be Decided

Should the notice to end tenancy issued on May 3, 2012?

Background and Evidence

The tenancy began on January 1, 2012. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$400.00 was paid by the tenant.

The landlord testified the tenant was served with a ten day notice to end tenancy for unpaid utilities on May 3, 2012.

The landlord testified the tenant was served on April 28, 2012, with the hydro bill by leaving a copy in the tenant's mail box. The landlord testified that on April 15, 2012, he provided the tenant with another copy of the hydro bill and the tenant paid a portion of that bill, which left a balance owing of \$85.53.

The landlord testified on May 3, 2012, he issued a ten day notice to end tenancy for the balance owing and served the tenant with the notice.

The tenant testified that she did not receive a copy of the hydro bill in her mail box. The tenant stated the first time she received a copy of the hydro bill was on April 15, 2012, when she asked the landlord to provide a copy, which was personally delivered to her.

Analysis

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

In this case, the landlord served the tenant with the hydro bill by placing a copy of the bill in the tenant's mail box on April 28, 2012. Under the Act the landlord used an approved method of service, which would be deemed served three days later.

However, the deemed served provision has been rebutted by the tenant. The tenant's evidence was that she did not receive a copy of the hydro bill in her mail box and it was not until April 15, 2012, when the landlord provided her a copy in person as requested.

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.

In this case, the landlord knew the tenant claimed she did not receive a copy of the hydro bill left in her mail box on April 28, 2012. The parties agreed the tenant received in person a copy of bill on April 15, 2012. I find the tenant had thirty days after receiving the demand on April 15, 2012, to pay the utility in full. Therefore, the notice issued on May 3, 2012, was issued prematurely and as a result the notice to end tenancy must be cancelled. The tenant's application is granted, the notice to end tenancy issued on May 3, 2102, is cancelled. Tenancy will continue until legally ended in accordance with the Act.

It is suggested that the parties make arrangements to exchange the utilities bills in person.

The tenant is cautioned that she is required to pay half of all utilities under the tenancy agreement, including water. The tenant is responsible to pay the utilities within a reasonable amount of time once she has received the demand for payment from the landlord, and the tenant is to ensure **payment is received** by the landlord within the thirty days as required by the Act. **[Emphasis added]**

The tenant is cautioned that if she fails to comply with the Act the landlord may have grounds under section 46 of the Act to end tenancy, and may produce a copy of this decision in evidence in any further hearing.

Conclusion

The notice to end tenancy issued on May 3, 2012, is cancelled. The tenancy will continue until legally ended in accordance with 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: June 04, 2012.

Residential Tenancy Branch