



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, RP, FF

Introduction

This hearing concerns an application by the tenants for cancellation of a notice to end tenancy for unpaid rent or utilities / an order instructing the landlord to make repairs to the unit, site or property / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the year-long fixed term of tenancy began in January 2012. Monthly rent of \$1,100.00 is due and payable in advance on the first day of each month, and a security deposit of \$550.00 was collected.

Arising from rent (\$400.00) and utilities (\$125.00) which remained unpaid when due on June 1, 2012, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities dated June 7, 2012. The tenants filed an application to dispute the notice within 5 days of receiving it on June 12, 2012. Further, the landlord testified that the tenants paid the outstanding rent of \$400.00 within 5 days of receiving the notice. However, to date, no additional payment has been made for utilities, and another 10 day notice to end tenancy has apparently been issued, a copy of which is not in evidence.

During the hearing the parties undertook to explore whether a settlement of the dispute could be achieved, however, these efforts were not ultimately successful. Matters discussed included, but were not limited to, a mutual agreement for ending tenancy early, giving notice to show the unit to prospective new renters, the efficiency of the

furnace, the formula for calculating the cost of utilities, responsibility for maintaining the yard, and so on.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 46 of the Act addresses **Landlord's notice: non-payment of rent**, and provides in part as follows:

46(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or...

As the landlord testified that overdue rent was paid in full within 5 days after service of the 10 day notice, pursuant to the above statutory provision, the 10 day notice is hereby set aside.

As to utilities, section 46(6) of the Act provides as follows:

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.

There is presently no evidence before me of a written demand issued by the landlord to the tenants for payment of utilities.

In regard to the aspect of the tenants' application concerning repairs to the unit, site or property (furnace), I find there is insufficient evidence before me to support such an application and it is, therefore, hereby dismissed.

Conclusion

The notice to end tenancy is hereby set aside, and the tenancy therefore continues in full force and effect.

The application for an order instructing the landlord to make repairs to the unit, site or property is hereby dismissed.

As the tenants have achieved limited success with their application, I find that they have established entitlement to recovery of half the \$50.00 filing fee. I hereby order that the tenants may withhold \$25.00 from the next regular payment of monthly rent in order to recover this entitlement.

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: July 04, 2012.

Residential Tenancy Branch