



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FF

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), seeking to cancel a 10 day Notice to End Tenancy for Unpaid Utilities, and to recover the filing fee.

The tenant and the agent for the landlord attended the hearing. Both parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The agent for the landlord confirmed receipt of the tenant's evidence and confirmed that the landlord had an opportunity to review the evidence prior to the hearing. The tenant stated that he was currently outside of the country, however, was willing to agree to agree to the documentary evidence from the landlord after he was advised by the agent for the landlord that the evidence had been mailed to him via registered mail and the evidence was described orally.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Utilities be cancelled?
- Should the applicant tenant recover the filing fee?

Background and Evidence

A written tenancy agreement was provided as documentary evidence prior to the hearing. The tenant moved into the rental unit on November 17, 2011. A one year fixed term tenancy agreement indicates a start date of December 1, 2011 and an end date of November 30, 2012. Monthly rent of \$1,695.00 is due on the first day of each month.

According to the written tenancy agreement, heat and electricity are not included in the monthly rent, however, hot water and water supply are included in the monthly rent.

The tenant was served with a 10 Day Notice to End Tenancy for Unpaid Utilities (the "Notice") dated July 29, 2012. The tenant testified that he received the Notice on August 1, 2012 and disputed the notice on August 7, 2012 (August 6, 2012 was a statutory

holiday) in accordance with the *Act*. The Notice indicates that \$445.93 owing in utilities, following a written demand on June 22, 2012.

The tenant affirmed that six months into the tenancy, new bills began to arrive from a company charging fees for cooling, heating, hot water and cold water. The agent for the landlord affirmed that the new bills which include hot water charges and cold water charges, are the responsibility of the tenant as they are for “monitoring” of the hot and cold water which are part of a “green” system unique to the building.

The tenant disputed the testimony of the landlord by stating that he already pays hydro bills of approximately \$75.00 to \$100.00 per month, in addition to his rent of \$1,695.00 per month, and that he was unaware at the start of the tenancy that there would be additional bills for heating and charges for water, the latter of which are specifically included in the written tenancy agreement. The tenant stated that when he put the hydro account into his name, the average person would not assume that they would be receiving additional bills months later for heating related costs. The tenant testified that an addendum to the tenancy agreement would have clarified any confusion at the start of the tenancy, which did not occur.

The landlord confirmed that there has been no discussion with the tenant to date regarding deducting the fees for the hot and cold water from the new bills.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

The written tenancy agreement clearly indicates that hot water and water supply are included in the monthly rent. **I find** that the new bills submitted as documentary evidence are vague and therefore, it is not clear what portion is the responsibility of the tenant, if any. Further, **I find** that the invoices refer to the strata with a strata number included, which provides supporting evidence that the bills are strata utilities versus utilities which the tenant expected to pay.

The landlord served the tenant a 10 Day Notice for Unpaid Utilities. The tenant disputed the Notice within the required timeframe in accordance with the *Act*. In the case of disputed notices, the landlord who has served the Notice has the burden of proof to prove the reasons set out in the Notice at a dispute resolution hearing. **I find** the landlord has failed to meet the burden of proof by proving that the utilities bills submitted are the tenants responsibility and not already included in the monthly rent. Therefore, **I cancel**

the 10 Day Notice to End Tenancy for Unpaid Utilities. **I order** that the tenancy continues until ended in accordance with the *Act*.

As the tenant was successful in his application, I grant the tenant the recovery of the filing fee of \$50.00. **I authorize** the tenant to deduct the amount of **\$50.00** from the rent owed for October, 2012.

Conclusion

I cancel the 10 Day Notice for Unpaid Utilities.

I grant the tenant the recovery of the \$50.00 filing fee and authorize the tenant to deduct that amount from October 2012 rent.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: September 05, 2012

Residential Tenancy Branch