



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, FF

Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 9, 2012 and to recover the filing fee for this proceeding. The Tenants also applied for more time to cancel a Notice to End Tenancy however, I find that they applied for dispute resolution within the 5 days granted under s. 46(4) of the Act and therefore that part of their application is dismissed without leave to reapply.

During the hearing, the Parties also advised me that the last of the Tenants vacated the rental property on August 29, 2012. Consequently, the Tenants' application to cancel the 10 Day Notice is also dismissed without leave to reapply. However the Tenants still sought to recover the filing fee they paid for this proceeding. The Landlord disputed this part of the Tenants claim and also argued that this dispute did not fall under the jurisdiction of the Act.

Issue(s) to be Decided

1. Does this dispute fall under the jurisdiction of the Act?
2. Are the Tenants entitled to recover the filing fee they paid for this proceeding?

Background and Evidence

In April 2012, the Parties entered into a verbal agreement to rent an acreage on which there was a 4 bedroom home. The terms of the proposed agreement were set out in an e-mail dated April 29, 2012 and in particular, provided that in exchange for \$400.00 worth of work each month to improve the property, the Landlord would forego the payment of rent. The Tenants agreed to pay the utilities that were in the Landlord's name. The Landlord said he also was to have an option of staying in one of the 4 bedrooms in the residence from time to time however the Tenants claim that the Landlord advised them that he only wanted the option of staying on the property in his RV from time to time (which the Landlord did).

The Parties agree that the Tenants took possession of the rental property on May 1, 2012. The Landlord admitted that during the tenancy, he did not stay in the residence. On August 9, 2012, an agent for the Landlord served the Tenants in person with a 10

Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 9, 2012. The Notice alleged that the Tenants had failed to pay rent of \$4,000.00 and utilities of \$415.95. The Landlord said it was his opinion that the Tenants were not making the improvements that were agreed to and that they failed to provide him with receipts or otherwise account for building and other supplies which the Tenants denied. The Tenants argued that the Landlord had not provided them with utility invoices which the Landlord denied.

Analysis

Section 4(c) of the Act says that “*the Act does not apply to living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.*” As the Landlord argued that this dispute does not fall under the scope of the Act, he bears the onus of proof and must show on a balance of probabilities that the Act does not apply in this matter because he (as the owner of the property) shared bathroom and kitchen facilities with the tenants. However, I find that there is no evidence that the Landlord shared kitchen or bathroom facilities with the Tenants during the tenancy and little evidence that it was the intention of the Parties that he would do so. Consequently, I find that this is a matter that falls under the jurisdiction of the Act.

However, I also find that the Landlord should not have to bear the \$50.00 filing fee paid by the Tenants for this proceeding. Although the Tenants were required under s. 46 of the Act to file an application for dispute resolution to dispute the Notice, I find that the Tenants had moved out of the rental unit 2 days before filing their application and the last of them moved off of the rental property approximately 2 weeks later. Consequently, I find that it questionable whether the Tenants intended to pursue their application to cancel the 10 Day Notice when they filed it but in any event, by later deciding to end the tenancy, the Tenants rendered the need for this hearing moot. As a result, the Tenants’ application to recover the \$50.00 filing fee for this proceeding is dismissed without leave to reapply.

Conclusion

The Tenants’ application is dismissed without leave to reapply. 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: September 18, 2012.

Residential Tenancy Branch