



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 the tenant's application pursuant to section 46 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Utilities (the 10 Day Notice). Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss the issues in dispute with one another.

The tenant confirmed that he received the landlord's 10 Day Notice posted on his door on December 5, 2012. The landlord confirmed that on December 15, 2012, he received a copy of the tenant's dispute resolution hearing package posted on his door on or about December 14, 2012. Although the tenant did not serve his hearing package to the landlord in one of the ways prescribed in section 89 of the *Act*, I am satisfied that the landlord did receive the tenant's dispute resolution hearing package and was prepared to proceed with this hearing.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Background and Evidence

This one-year fixed term tenancy commenced on April 1, 2012. The Residential Tenancy Agreement (the Agreement) signed by both parties and entered into written evidence by the landlord called for a monthly payment of \$1,800.00 for rent, payable in advance on the first of each month. Section 3 of the Agreement noted that the monthly rental payment does not include hydro, heat or cablevision, all of which would require extra payments by the tenant if provided by the landlord. The landlord has supplied heat and hydro during this tenancy.

The issue in contention in this dispute is the amount charged by the landlord to the tenant for heat during this tenancy. Prior to this hearing, the landlord understood that the tenant had arranged his own hydro and cable accounts with those utility providers. At this hearing, the tenant testified that he has no separate hydro account. The sole hydro account for this property is under the landlord's name. Based on his calculations of Fortis BC Gas bills he has received since this tenancy began, the landlord identified

\$408.00 as owed by the tenant as of November 1, 2012. This is the amount shown as owing in the 10 Day Notice issued on December 5, 2012.

Analysis

Although the parties agreed that the \$408.00 identified in the 10 Day Notice remains unpaid, the parties testified that they entered into a settlement agreement at a December 10, 2012 hearing regarding the landlord's issuance of a 1 Month Notice to End Tenancy for Cause. At that hearing, both parties agreed to end this tenancy by January 31, 2013. The landlord was issued an Order of Possession, to be used if the tenant does not vacate the premises by that date.

Under these circumstances, the landlord said that he was no longer pursuing the 10 Day Notice issued on December 5, 2012 for unpaid utilities. Since the landlord is no longer pursuing that 10 Day Notice, I allow the tenant's application to cancel the 10 Day Notice of December 5, 2012, with the effect that this tenancy continues until January 31, 2013.

The landlord also testified that his agent, a bailiff, served the tenant with another 10 Day Notice to End Tenancy for Unpaid Rent on January 8, 2013. The tenant confirmed that he has not yet paid his January 2013 rent. He said that he realized that he must pay the amount requested in this most recent 10 Day Notice within 5 days of receiving it, or risk ending this tenancy earlier than January 31, 2013.

While the tenant's application to cancel the 10 Day Notice of December 5, 2012 is allowed, the landlord is not precluded from applying for a monetary award for recovery of rent or utilities owing during this tenancy.

Conclusion

I allow the tenant's application to cancel the 10 Day Notice issued on December 5, 2012. This tenancy continues. 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: January 10, 2013

