



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Avex Holdings Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary Order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 23, 2013 an agent for the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. The Landlord submitted a copy of a Canada Post Receipt, with a tracking number, which corroborates that the Landlord mailed a package to the rental unit. Section 90 of the *Act* determines that a document served by mail is deemed to have been served on the fifth day after it is mailed, which in these circumstances is May 28, 2013.

Based on the written submissions of the Landlord, I find the Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid utilities, pursuant to sections 55 and 67 of the *Act*?

Background and Evidence

I have reviewed the following evidence that was submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant.
- A copy of a residential tenancy agreement between the Landlord and the Tenant, which appears to be signed by the Tenant, that indicates that the tenancy began on November 15, 2012 and that the Tenant was required to pay rent of \$580.00 by the first day of each month.

- A copy of a “Final Demand for Utilities Payment”, dated April 12, 2013, in which an agent for the Landlord declared that the Tenant received a request for payment on April 10, 2013.
- A handwritten ledger that declares the Tenant currently owes \$216.39 for utilities.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was signed by an agent for the Landlord and is dated May 13, 2013, which does not declare when the Tenant must vacate the rental unit. The Notice does declare that the Tenant has failed to pay utilities of \$216.39. The Notice declares that the tenancy will end unless the Tenant pays the rent/utilities or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of a signed Proof of Service of the 10 Day Notice to End Tenancy in which an agent for the Landlord declared that the agent posted the Notice on the Tenant’s door on May 13, 2013, in the presence of another party, who also signed the Proof of Service.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was posted on May 13, 2013.

The Landlord is seeking a monetary Order for \$216.39.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$580.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was posted at the rental unit on May 13, 2013.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the rent is due by giving a notice to end tenancy. Section 46(6) stipulates that if a tenancy agreement requires the tenant to pay utility charges to the landlord and the charges are unpaid more than 30 days after the tenant is given written demand for payment of the utilities, the landlord may treat the unpaid utilities as unpaid rent and may give notice to end the tenancy.

Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(c) of the *Act* stipulates that to be effective a notice to end tenancy must state the effective date of the notice.

In the circumstances before me I find that the 10 Day Notice to End Tenancy does not declare the effective date of the Notice, as is required by section 52(c) of the *Act*. I therefore find that the Notice is not effective, as the Landlord did not comply with section 52(c) of the *Act*.

I find that the tenancy agreement clearly indicates that the cost of heat, electricity, hot water, natural gas, and propane are not included in the rent. There is nothing in the tenancy agreement that specifies whether the Tenant is required to pay these costs directly to the Landlord or whether the Tenant is expected to pay these costs directly to the utility companies.

Even if I were to accept that the Tenant is obligated to pay utilities directly to the Landlord, I find that the Landlord has submitted insufficient evidence to show that the Tenant currently owes \$216.39 in utility charges. In reaching this conclusion I was heavily influenced by the absence of documentary evidence, such as utility bills, that corroborates the amounts shown on the handwritten ledger. In my view, a landlord has an obligation to provide documentation of these charges whenever such documentation can be reasonably obtained.

In determining that I did not have sufficient evidence to conclude that the Tenant owes \$216.39 for utilities, I was further influenced by the fact that the calculations on the ledger are incorrect, which causes me to question the reliability of this documentary evidence.

Conclusion

As the 10 Day Notice to End Tenancy is not effective, I dismiss the Landlord's application for an Order of Possession, without leave to reapply.

As the Landlord's Application for Dispute Resolution is missing documentary evidence that could support the application for unpaid utilities, I dismiss the claim for a monetary Order with leave to reapply on that specific issue.

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: May 29, 2013

Residential Tenancy Branch

