



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTHWAY STEEL LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

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 (the "10 Day Notice"), and to recover the cost of the filing fee.

An agent for the tenant company (the "agent"), the landlord, and an agent for the landlord (the "landlord agent") attended the hearing. The parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Neither party served documentary evidence to the Residential Tenancy Branch. As a result, there was no documentary evidence to consider.

Preliminary and Procedural Matter

During the hearing, the parties mutually agreed to amend the tenant's application to remove the name "Debbie" from the tenant's application as the name was included in error.

Issue to be Decided

- Should the 10 Day Notice be cancelled?

Background and Evidence

Although a copy of the 10 Day Notice was not submitted in evidence, the parties agreed that a 10 Day Notice dated January 18, 2014 was served on the tenant by posting to the tenants' door on January 18, 2013. The agent stated that he received the 10 Day Notice on January 21, 2014. The 10 Day Notice indicated that \$615.43 in utilities was owing by the tenant, which the landlord testified that some of which were "cleaning costs" and not

utilities. The effective vacancy date listed on the 10 Day Notice was January 28, 2014, which would automatically correct to January 31, 2014 under the *Act*.

The parties agreed that the agent paid the unpaid utilities within 5 days as permitted and described on page two of the 10 Day Notice.

Analysis

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

10 Day Notice issued by landlord – Section 46(4) of the *Act* states that within 5 days after receiving a 10 Day Notice the tenant may pay the overdue amount in which case the 10 Day Notice is of no effect. In the matter before me, the unpaid utilities were confirmed by the parties as being paid by the agent for the tenant. The cleaning costs described by the landlord are not utilities and do not become unpaid utilities under the *Act*. Therefore, **I find** the 10 Day Notice is of **no force or effect** as the unpaid utilities were confirmed as being paid within 5 days of being served the 10 Day Notice.

As the tenant's application had merit, **I grant** the tenant the recovery of their **\$50.00** filing fee and **I grant** the tenant a monetary order pursuant to section 67 of the *Act* in the amount of **\$50.00**.

Conclusion

The 10 Day Notice dated January 18, 2014 issued by the landlord is of no force or effect. The tenant has been granted a monetary order in the amount of \$50.00 for the recovery of their filing fee. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: March 14, 2014

Residential Tenancy Branch

