



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, CNR

Introduction

This is an application to cancel a Notice to End Tenancy that was given for landlord use, an application to cancel a notice that was given for nonpayment of utilities, and a request for recovery of the filing fee.

A substantial amount of documentary evidence, photo evidence, digital evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

All testimony was taken under affirmation.

Issue(s) to be Decided

1. Whether or not to cancel a two-month Notice to End Tenancy.
2. Whether or not to cancel a 10 day Notice to End Tenancy.
3. Whether to Order recovery of the filing fee.

Background and Evidence

This tenancy began on June 20, 2013 with a monthly rent of \$1500.00.

This is a fixed term tenancy with an expiry date of June 20, 2014.

October 31, 2013 the landlord personally served the tenants with a two-month Notice to End Tenancy for landlord use.

On December 12, 2013 the landlord gave the tenants a demand letter to pay utilities in the amount of \$171.29.

On December 31, 2013 the landlord posted a 10 day Notice to End Tenancy for nonpayment of utilities in the amount of \$171.29.

The tenants paid the full outstanding utilities along with their rent on January 1, 2014.

The tenants are asking that both of the Notices to End Tenancy be set aside.

Analysis

The landlord does have the right to give a Notice to End Tenancy for landlord use, however when the tenants have a fixed term tenancy, the earliest date that the landlord can give the notice for is the expiry date of the fixed term tenancy, which in this case is June 20, 2014.

When the landlord gives a Notice to End Tenancy within an incorrect end of tenancy date, that notice is self-correcting to the first allowable end of tenancy date.

Therefore I will not cancel this Notice to End Tenancy, however as stated, the end of tenancy date will not be December 31, 2013 as stated on the notice, the end of tenancy date will actually be June 20, 2014.

I will however be setting aside the 10 day Notice to End Tenancy, because the tenants paid their utilities within 30 days of receiving the demand for payment of those utilities from the landlord.

Sections 46(1) and 46(6) of the Residential Tenancy Act state:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

The tenants paid the utility charges well before the 30 day time limit set out in the Act, and therefore the landlord does not have the right to end this tenancy with a 10 day notice for nonpayment of rent.

Since both the landlord's Notices to End Tenancy were incorrect, at least partially, I allow the tenants request for recovery of the filing fee.

Conclusion

The two-month Notice to End Tenancy dated October 31, 2013 is not canceled, however the end of tenancy date is corrected to June 20, 2014.

The 10 day Notice to End Tenancy dated December 31, 2013 is hereby cancel.

I have allowed the tenants request for recovery of the filing fee, and therefore the tenants may make a one-time \$50.00 deduction from future rent payable to the landlord.

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 27, 2014

Residential Tenancy Branch

