



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, PSF

Introduction

This is an application for an order to cancel a Notice to End Tenancy that was given for nonpayment of utilities, a request for a Monetary Order for \$750.00, and a request for an Order for the landlord to provide services required under the law.

Some documentary evidence, digital evidence, and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issues to be decided are:

- Whether or not to cancel a Notice to End Tenancy that was given for nonpayment of utilities.
- Whether the applicant has established a monetary claim in the amount of \$750.00.
- Whether to issue an Order to the landlord to provide services.

Background and Evidence

The applicant testified that:

- The landlord has given her a Notice to End Tenancy that states that there are \$365.00 in outstanding utilities, however the landlord has not provided a written

request for outstanding utilities, nor has the landlord provide a letter showing the breakdown of utilities that are owed.

- She fails to see how any utilities could be outstanding, as she made a payment of utilities at the beginning of January 2014, and she is unaware of any further utility invoices.
- She is also requesting a Monetary Order for \$750.00 to cover the cost of lost food, and loss of power and heat for a good portion of the months of January 2014 and February 2014.
- The tenant in the other rental unit has control of the heat and the power, and that tenant has been turning off both the heat and the power to her rental unit and as a result she's had to endure poor living conditions, and has lost all the food in her refrigerator as it all spoiled.
- She has asked the landlord to deal with the problem; however the problem is still intermittently ongoing.

The respondent testified that:

- He has not sent the tenant a demand letter for outstanding utilities, nor has he given her a copy of the utility invoice. He told the tenant what utilities must be paid and she has failed to pay them and therefore he's given her a 10 day Notice to End Tenancy.
- The tenant did tell him that the other tenant in the rental property has been turning off the heat and the power, however he has spoken with that other tenant and has informed him that he is not to turn off the heat or power under any circumstances.
- He was unaware that the other tenant was still turning off the heat and power on occasion.
- He will again speak to the other tenant and informed him that he is not to turn off the heat or power at all, and if he continues to do so he will be given an eviction notice.

Analysis

Section 46 of the Residential Tenancy Act states:

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.

In this case the landlord has stated that he has not given the tenant a written demand for payment of the utilities and therefore the landlord has not complied with the requirements of the Residential Tenancy Act and cannot end this tenancy at this time with a 10 day Notice to End Tenancy.

I therefore will be canceling the Notice to End Tenancy.

As far as the monetary portion of the claim is concerned, I accept that the other tenant in the rental property has been turning off the power and the heat to the applicant's rental unit; however I also accept the landlords testimony that he has informed the other tenant that he is not allowed to turn off the power and the heat.

It appears that the other tenant has continued to turn off the power and heat even after being informed by the landlord that he is not allowed to do so; however there is no evidence to show that the landlord is negligent in this matter.

The landlord in this case is in the unenviable position of being caught in the middle of a dispute between his two tenants in the rental property, where it appears he's being told one thing by one tenant and something else by the other tenant.

The landlord has stated, at the hearing, that he will again inform the other tenant that he is not to tamper with the power and the heat and that if he continues to do so and eviction notice will be issued.

Further, although the applicant claims to have lost the food in her refrigerator, she has provided no evidence of what food was lost, or how much the replacement cost of that lost food was.

I therefore will not be issuing any Monetary Order's.

Conclusion

The 10 day Notice to End Tenancy dated February 3, 2014 is hereby canceled and this tenancy continues.

The monetary portion of the tenants claim is dismissed without leave to reapply.

Further, I Order that the landlord ensure that the applicants utilities are no longer interfered with by the other tenant in the rental property.

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: March 03, 2014

Residential Tenancy Branch

