



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, MNDC

Introduction

This hearing was convened in response to the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), for a monetary order for money owed or compensation for damage or loss, and for an order allowing a reduction in rent.

The tenant, her witness, and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. The witness was excused from the hearing until he testified.

Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue-*As a preliminary issue, I have determined that the portion of the tenant's application dealing with a request for monetary compensation and for an order allowing a reduction in rent is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for monetary claim and that order, **with leave to reapply**.

The hearing proceeded only upon the tenant's application seeking cancellation of a 10 Day Notice to End Tenancy.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

Background and Evidence

The tenant provided a written tenancy agreement showing that this tenancy began on October 15, 2013, monthly rent is \$1000, and the tenant paid a security deposit of \$500.

The parties agreed that the tenancy actually began on November 1, 2013.

The tenant's rental unit is in the lower level of a home, and the landlord rents the upper level to other tenants.

The parties each supplied a copy of the written tenancy agreement; however, the tenancy agreements contain different terms regarding utilities. The tenant's tenancy agreement states that hydro, gas, and cable internet are separate and shared with the tenant above. The landlord's copy of the tenancy agreement state that utilities are "shared with upstairs tenant."

The tenant disputed signing the landlord's tenancy agreement, indicating that her signature was a forgery on that document.

In response to my question, the tenant submitted that the parties agreed that the tenant would pay \$50 per month for utilities to the tenant upstairs and never more than \$100 per month.

When asking the landlord what her understanding of the utilities term in the tenancy agreement meant, she said that the tenant was to pay 50% to the upper tenant, who had the utilities in his name. The upper tenant at the time was the tenant's witness, SD, who moved out on February 28, 2014.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 10 Day Notice. The landlord testified that she "guessed" that she served the tenant the Notice on May 2, 2014, by personal delivery. The Notice listed an effective end of tenancy on May 12, 2014.

The Notice claimed that the tenant had not paid utilities owing of \$160.86.

The landlord submitted that as of March 1, 2014, the utility bill for the residential property is in her name, and that she now collects the utilities from the tenant. In response to my question, the landlord submitted that she charged the tenant 35% of the utility bills, based upon her assessment that the tenant should pay 1/3 of the bills as the rental unit was smaller than the upper rental unit.

I asked the landlord how she calculated the amount she listed on the Notice as unpaid utilities, she pointed to her evidence, which shows that she is asking for unpaid utilities since November 2013. The landlord confirmed that the upper tenant, SD, paid the utility bills for November, December, January and February, for which the landlord is claiming, and that she has not paid SD these amounts.

The landlord further submitted that part of the unpaid utilities listed on the Notice was an estimate from the utility company.

Tenant's response-

In response, the tenant denied owing the amount listed, as her agreement was that utilities were to be \$50 per month.

The tenant submitted that after SD moved out, new tenants moved in, and that the tenancy agreement with the new tenants provides that utilities are included with their monthly rent. The tenant suggested that it would be hard to pay a percentage with the upper tenants, as they do not pay a separate utility bill.

Witness SD's testimony-

The witness stated that, as he collected the utilities from the tenant when he lived there, the tenant was paid up-to-date.

In response to my question, the witness stated that the landlord informed him that the tenant would pay him \$50 per month for utilities.

Analysis

When a tenant disputes a notice to end the tenancy, the landlord has the burden of proving that the Notice was valid when it was issued, and in this case, that the tenant owed unpaid utilities.

Under section 6(3) of the Act, a term in a tenancy agreement is not enforceable if the term is unclear. In the case before me, I find that the term in the parties' tenancy agreement regarding the tenant's share of utilities to be paid is unclear. For instance, there was not a percentage or amount provided so that the tenant would clearly understand her obligation. I also find that the term in question was different on the tenant's tenancy agreement and the landlord's tenancy agreement.

As I find the term in the tenancy agreement regarding utilities owed by the tenant to be unclear, and therefore unenforceable, I find the amount listed by the landlord on the 10 Day Notice is not supported. I additionally considered that the landlord included amounts she has not paid, as they were paid by SD, and also included an estimate.

As a result, I find the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated and issued on May 2, 2014, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

Going forward, as I have found the term in the tenancy agreement regarding the tenant's utility payments to be unclear and therefore unenforceable, pursuant to section 62(3) of the *Act*, I find that the tenant is to pay the landlord \$50 per month for those utilities. In making this finding, I considered that the tenant and her witness provided clear, consistent evidence that the tenant and the landlord agreed the tenant's portion was \$50 per month. I also found that the landlord failed to substantiate her argument that the agreement was to be 35%.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's 10 Day Notice, and the Notice is hereby cancelled with the effect that the tenancy will continue until ended in accordance with the *Act*.

The tenant will pay the landlord \$50 per month, beginning with the next month's rent payment, for utilities.

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: June 24, 2014

Residential Tenancy Branch

