



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate Services Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) 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 due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 20, 2015 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on August 27, 2013 for a 5 month fixed term tenancy beginning on September 1, 2013 that converted to a month to month tenancy on February 1, 2014 for the monthly rent of \$2,300.00 due on the 1st of each month and a security deposit of \$1,150.00 was paid. The agreement stipulates that electricity and heat are included in the rent with a notation that \$20 hydro included. In addition, there is an addendum to the agreement that stipulates the tenant is responsible for the hydro bill in excess of \$20.00 per month; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on June 10, 2014 with an effective vacancy date of June 20, 2014 due to \$314.26 in unpaid utilities following a written demand on May 5, 2014.

Documentary evidence filed by the landlord indicates the tenant failed to pay the utilities owed after a demand letter dated May 5, 2014 was presented to the tenant and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on June 10, 2014 at 6:00 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the utilities or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on June 13, 2014 and the effective date of the notice is amended to June 23, 2014, pursuant to Section 53 of the *Act*.

Section 46(6) of the *Act* states that if the tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, then the landlord may treat the unpaid utility charges as un paid rent and give a notice to end the tenancy under Section 46.

Upon review of the tenancy agreement I find that the clauses pertaining to utility charges are conflicting and contradictory. That is on the tenancy agreement itself it states that electricity and heat are included in the amount for rent paid; then there is a notation that "\$20.00 hydro include". As such, I cannot determine if hydro (electricity and heat) are included or if only \$20.00 of hydro is included.

The clause in the addendum does clarify that the tenant is responsible for hydro over \$20.00 per month, however this contradicts the portion of the agreement that states that electricity and heat is included.

Section 6 of the *Act* stipulates that a term in a tenancy agreement is not enforceable if, among other reasons, the term is not expressed in a manner that clearly communicates the rights and obligations under it. I find the clauses in the tenancy agreement and addendum are not expressed in such a manner and are therefore not enforceable.

Further, even if I were to accept that the clauses were clear and enforceable, there is nothing in the clauses, either in the agreement or the addendum that require the tenant to pay the utility charges to the landlord. As such, I find the landlord cannot use

Section 46(6) to consider the unpaid utilities as unpaid for the purposes of ending the tenancy under Section 46.

Conclusion

Based on the above, I dismiss the landlord's Application in its entirety.

I note however, that while I cannot consider the monetary claim for utility payments as rent for the purposes of this Application through the direct request process I grant the landlord leave to reapply only for the monetary claim through the participatory hearing process. I do not grant leave for the landlord to reapply for an order of possession.

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 26, 2014

Residential Tenancy Branch

