



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Abstract Development
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and for recovery of the filing fee paid for this application.

The tenant and the landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord confirmed that he had received a package of evidence from the tenant. The landlord did not submit documentary evidence. There were no issues raised with respect to the service of the application.

Thereafter the parties 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.

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 matter-I have determined that the portion of the tenant's application dealing with a request for an order requiring the landlord to comply with the Act is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and dismissed that portion of the tenant's request for that order, with leave to reapply.

The hearing proceeded only upon the tenant's application to cancel a notice to end the tenancy.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence shows that this tenancy began on May 1, 2014, monthly rent is \$950.00, and the tenant paid a security deposit and a pet damage deposit totalling \$950.00. The rental unit is the upper half of a home, with a lower suite also rented by the landlord to other tenants.

In support of their Notice, the landlord submitted that he served the tenant the Notice on February 11, 2015, by attaching it to the tenant's door and by mail, not being specific as to whether this was registered mail. The Notice listed unpaid utilities of \$286.95, due as of December 1, 2014, and an effective move-out date of February 22, 2015.

The tenant submitted she did not receive the Notice until February 16th or 17th and that the landlord does not make the effort to hand deliver her documents.

The written tenancy agreement submitted by the tenant shows that the landlord does not provide utilities as part of the monthly rent. The evidence submitted by the tenant shows that there was an attempt by the landlord, early in the tenancy, to require the tenant to put the hydro account into her name and share the hydro costs with the lower tenant. The tenant submitted that when she learned that outside persons unknown to her have a key to the shared laundry facilities in the residential property, she refused to put the hydro account into her name, as she did not want to pay for other persons' laundry use.

The evidence of the tenant shows that the hydro account is now in the landlord's name.

The landlord here, not the original landlord's agent representing the property management landlord at the inception of the tenancy, submitted that there is a clear understanding that the tenant is responsible to pay her own hydro costs. The landlord submitted further that although no mention is made in the written tenancy agreement as to a percentage the tenant should pay, he asserted a fair amount would be 60% of the

hydro costs, as the rental unit here was 60% of the square footage in the residential property, or \$25.00.

The landlord agreed that third parties have access to and use the shared laundry of the upper and lower tenants, classifying this as common area shared by other tenants of the landlord living on another street. This was also confirmed by a letter from those outside tenants of the landlord, stating their address and that their use of the laundry facilities at this residential property was long term. As to the allocation of costs apportioned for the outside persons' laundry use, the landlord submitted they contacted the hydro company and performed costs analyses to make an appropriate deduction from the 60% requested of the tenant.

In further response, the tenant submitted that when she first viewed the rental unit with the previous agent of the landlord, she was never informed that other persons who don't live in the residential property would have access to the laundry facilities.

The tenant submitted further that she has requested promised repairs from the landlord since the beginning of the tenancy, and as the landlord never made the repairs, she believed the landlord absorbed hydro costs in return for not making the repairs.

The tenant denied any agreement with the landlord in relation to an amount or percentage of utilities.

Analysis

After reviewing the relevant oral and documentary evidence, I find that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on or about February 16, 2015, and that she filed an application for dispute resolution in dispute of the Notice within the required time frame of 5 days from service of the Notice.

As to the landlord's Notice, Section 46(6) of the Act states that a landlord may treat unpaid utilities as rent for the purpose of the Notice if the tenancy agreement provides that the tenant pay utility charges to the landlord and they remain unpaid 30 days after written demand for the payment. In this case, I do not find any term on this tenancy agreement which requires the tenant to pay the landlord for utility charges. While the landlord may not be responsible for the utility costs of the tenant under this written tenancy agreement, it is up to the landlord to provide a way for the tenant to be responsible for only her costs, not those of other tenants or outside parties sharing laundry facilities with these two sets of tenants.

For this reason, I find the landlord has not supported their Notice as there is no term in the written tenancy agreement requiring the tenant to pay utility costs to the landlord, and I therefore order that the Notice be cancelled, with the effect that the tenancy continue until it may otherwise end under the Act.

As I have granted the tenant's application seeking cancellation of the Notice, I award her recovery of the filing fee paid for this application of \$50.00. I direct the tenant to deduct \$50.00 from the next, or a future month's rent payment in satisfaction of her monetary award, and to notify the landlord of when this deduction is being made.

Conclusion

The tenant's application for cancellation of the Notice is granted, as I have ordered that the Notice be cancelled.

The portion of the tenant's application seeking an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, was severed, as it was not related to the primary issue listed in the tenant's application, and it was dismissed, with leave to reapply.

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 19, 2015

Residential Tenancy Branch

