



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on May 1, 2015 and to have the landlord provide services or facilities required by law.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified that the Application for Dispute Resolution and Notice of Hearing were served in person on May 6, 2015.

I find that the landlord been duly served in accordance with the Act.

Issues to be Decided

Should the Notice be cancelled?

Should the landlord provided services or facilities required by law?

Background and Evidence

The parties entered into a month-to-month tenancy, which began on July 1, 2011. The tenancy agreement filed in evidence indicated that there was a co-tenant under the agreement and heat was included in the rent.

On September 1, 2012, the tenants moved from the rental unit listed in the above tenancy agreement into another rental unit within the same building, the parties signed

no new tenancy agreement. The shelter information for the new rental unit indicated that the rent of \$835.00 was to be paid monthly.

The tenant testified that the landlord served them with a notice to end tenancy for unpaid rent on May 1, 2015. The tenant stated that they do not agree that they owe the landlord any money as they have a credit for over payment of utilities with the landlord. Filed in evidence is a copy of the Notice, which indicated that the tenant owed \$4,999.00, in unpaid rent. Filed in evidence is a calculation determined by the tenant in the amount of \$6,396.51 for over payment of hydro.

The tenant testified that the heat is supposed to be included in the rent; however, the hydro invoices have included both heat and electricity and this has been an ongoing problem since the tenancy commenced. The tenant stated that there was an agreement with the landlord that the landlord would place the hydro account in their name and in exchange they agreed that the rent would be increased by \$50.00 to cover their portion of the electricity. The tenant stated that the landlord has not abided by that verbal agreement. The tenant seeks to have the landlord place the hydro in their name as agreed upon.

The witness TD testified that they were the landlord's agent from July 2013 to August 2014. The witness stated that the heat was included in rent for all the occupants of the building; however, there was a problem with two units as during a renovation the electricians accidentally hooked the heat circuit into the electrical panels of these units, rather than into the main panel of the building.

The witness TD testified that they spoke to the owner TE in 2014, regarding this problems and TE agreed to give the tenant a reduction in rent until the tenant recovered the cost of the heating bills. The witness stated that the landlord was also going to place the hydro account in their name at that time and the tenant agreed to increase the rent by \$50.00 per month to cover the tenant's portion of the electricity.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case the landlord issued a notice to end the tenancy for non-payment of rent. The landlord did not attend the hearing to provide evidence. The tenant denied rent was owed. Therefore, I cancel the notice to end tenancy for non-payment of rent issued on May 1, 2015.

However, I have not made any finding on the issue of unpaid rent nor the amount due to the tenant for having the heat in their name, as those monetary issues were not before me. The notice was cancelled due to the landlord's failure to attend and provide evidence in support of the notice.

In this case, the tenant is requesting the landlord to provided services that were agreed upon. I accept the undisputed testimony of the tenant and the tenant's witness that heat was included in rent. I further accept the undisputed testimony that there was an agreement made in 2014 that the hydro was to be transferred from the tenant's name to the landlord's name and in exchange the tenant agreed to have their rent increased by \$50.00, per month to cover their portion of the electricity. I find the agreement reasonable based on the evidence presented.

Therefore, **I order the landlord** to have the hydro account placed in their name no later than July 31, 2015.

I further order in support of the agreement made in 2014, that commencing August 1, 2015, the tenant's rent of \$835.00 will be increased by \$50.00 and the new rent payable to the landlord is **\$885.00**.

Although the tenant has referred to their portion of rent during this hearing, if the tenant shares the accommodation with a co-tenant (as the evidence suggests) they can determine their share of the rent amongst themselves. However, it is the responsibility of both tenants to ensure that all rent is paid on time.

Should the landlord fail to comply with my order the tenant is authorised to deduct the full amount of the hydro invoice, when the invoice is received, from the new rent payable.

The tenant must provide the landlord with a copy of the hydro invoice at the time the deduction is made from rent. The tenant should keep a copy of the invoice and a detailed record.

The **tenant is cautioned** not to make any other deductions from rent. Should the tenant feel they are entitled to additional money for over payment of prior hydro invoices, they must make an application for dispute resolution and have an arbitrator determine the appropriate amount, if any, they may withhold.

Conclusion

The tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on May 1, 2015, is granted. The tenancy will continue until legally ended.

The landlord is **Ordered** to have the hydro account placed in their name no later than July 31, 2015.

Effective August 1, 2015, the tenant's new rent will increase by \$50.00 and the new rent payable is \$885.00. Should the landlord fail to comply with my above order the tenant is authorized to deduct the amount of the hydro invoice, when the invoice is received from the new rent.

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: July 6, 2015

Residential Tenancy Branch

