



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Preliminary Issue

The tenant made an application to cancel a 10 Day Notice for unpaid utilities. The tenant was required, as per the residential tenancy agreement to pay a portion of utilities and the evidence is that the tenant failed to do so. She claimed that her failure to pay the utilities was a result of not being provided a copy of the bill by the landlord.

Section 46 of the *Act* states that 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.

Since the time of her application, the tenant has paid the outstanding utilities. The landlord testified, at this hearing, that the landlords are not seeking an order of possession or to rely on the notice to end tenancy. However, the tenant did not wish to withdraw her application in its entirety. Pursuant to Rule 4 of the Dispute Resolution Rules of Procedure, the tenant amended her application to state that she would like guidance from an arbitrator "about whether the landlord can in future demand payment of a bill before presenting a copy of the bill itself (as this has been an ongoing issue during our tenancy)". She also sought to recover the \$50.00 filing fee paid for her application.

The tenant did not dispute that she had failed to pay the utilities to the landlord. The tenant in fact paid the amount outstanding in utilities, acknowledging the debt. The tenant submitted that it was a misunderstanding on the part of the landlords that lead to this dispute, her application and this hearing. She sought to recover her filing fee arguing that the landlords should be responsible for this fee in the circumstances.

Section 26 of the *Act* does not provide a provision for refusing to pay rent or utilities without the authority and authorization of the director. Section 26 states that a “tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

The landlords acted in accordance with the *Act* in serving the tenant with a 10 Day Notice. The tenant did not meet her obligation under section 26 of the *Act*. The landlords are not obligated to provide a copy of the utility bill to the tenant although, from a common sense perspective, it is best practice that a landlord do so.

Given that the tenant has not provided any evidence to suggest that the landlord should be responsible for her filing fee, I find that the tenant is responsible for the cost of her application. I dismiss the tenant’s application for recovery of her filing fee.

Conclusion

I dismiss the tenant’s entire application. The application to cancel a notice to end tenancy is moot. The application for recovery of her filing fee is dismissed.

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: January 29, 2016

Residential Tenancy Branch

