



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 105171 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on February 19, 2016. The Tenants filed seeking an order to cancel a 10 Day Notice to end tenancy for unpaid utilities and to recover the cost of the filing fee from the Landlord.

The hearing was conducted via teleconference and was attended by on Tenant who provided affirmed testimony that she would be representing both Tenants. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

No one was in attendance on behalf of the Landlord. The Tenant testified she personally served the Landlord's Agent with the notice of this application and this hearing on Monday February 22, 2016.

Based on the undisputed evidence of the Tenants, I find the Landlord was sufficiently served notice of this hearing in accordance with Section 89(1) of the Act. The hearing continued to hear the undisputed evidence of the Tenants in absence of the Landlord.

Issue(s) to be Decided

1. Should the 10 Day Notice issued February 16, 2016 be upheld or cancelled?
2. If cancelled, are the Tenants entitled to recover their filing fee?

Background and Evidence

The Tenant submitted evidence that they entered into a written month to month tenancy agreement that began on March 1, 2015. Rent of \$930.00 was due on or before the first of each month and on March 2, 2015 the Tenants paid \$465.00 as the security deposit. The tenancy agreement indicated water and heat were included in the rent. The Tenant testified they were required to pay the electricity bill directly to the municipality.

On February 16, 2016 the Tenants were issued a 10 Day Notice to end tenancy for \$159.78 of unpaid utilities that were payable on February 16, 2016. The Tenant argued she had paid the

utility bill in full with the following two payments: \$57.00 paid on February 9, 2016 and \$102.78 paid on February 18, 2016, as supported by her receipts.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accepted the undisputed version of events as discussed by the Tenant and corroborated by their evidence.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent or utilities in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants received the 10 Day Notice for unpaid utilities on February 16, 2016. I accept the Tenant's submission that the \$159.78 utilities were paid in full to the municipality as of February 18, 2016. As such, I conclude the required amount was paid within the required 5 day period; therefore, the 10 Day Notice issued February 16, 2016 is no longer valid. Accordingly, I grant the Tenant's application to cancel the 10 Day Notice.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act. The Tenants have been issued a Monetary Order for **\$100.00**. This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Tenants were successful with their application and were awarded recovery of their \$100.00 filing fee. The 10 Day Notice to end tenancy issued February 16, 2016 is cancelled and is of no force or effect.

This decision is final, legally binding, and 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: April 11, 2016

Residential Tenancy Branch

