



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, O, OLC

Introduction

The tenant applies to cancel a ten day Notice to End Tenancy dated and served May 2, 2016, given for unpaid rent of \$1200.00 and unpaid utilities of \$457.54. She also seeks an order that the landlord comply with the law and the tenancy agreement in some unspecified regard and for other, unspecified, relief.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show that the ten day Notice was a proper notice given for good grounds? Is the tenant entitled to other relief?

Background and Evidence

The rental unit is a five bedroom house. The tenancy started about December 20, 2015. The monthly rent is \$1200.00, due on the first of each month. The landlord holds a \$600.00 security deposit.

In regard to the ten day Notice, the landlord confirms that the rent demanded in it was paid May 3, within the five day period required by the ten day Notice. The tenant has not paid any of the claimed \$457.54 for utilities.

The landlord concedes that after recalculation, as of the date of the Notice, only about \$75.00 was owed for utilities, including Fortis gas bills.

In light of this revelation, it was stated at hearing that since the amount demanded by the Notice was in excess of the landlord's true figure, the Notice could not be considered to be valid.

On this basis the tenant's application to cancel the Notice is allowed and the ten day Notice to End Tenancy dated May 2, 2016 is hereby cancelled and of no effect.

There continues to be a dispute between the parties about whether the Fortis gas bill for the home is included in rent or is the responsibility of the tenant. The parties agreed that they would address this issue at the hearing and submit it to determination.

The parties produce a written tenancy agreement that states that utilities will be in the landlord's name and paid in full by the tenant. The agreement goes on to specify that the utilities are Hydro and Telus.

The landlord says that after the agreement was signed she sent utility account details to the tenant for payment that specifically referred to the Fortis gas costs and that the tenant did not object.

The tenant paid two lump sums toward reduction of her outstanding utility account without allocation of any of the money between the three utilities.

The tenant says that she did not agree to pay Fortis bills and that they were included in the rent. She says that when she finally received an accounting in April 2016 referring to the Fortis charges, she requested a copy of the tenancy agreement, as she had not been given one and recalled that it did not include the Fortis gas utility as a utility she was required to pay.

Analysis

Silence is not agreement. Even had the tenant stayed silent after the landlord demanded Fortis payments, it would not be evidence of her agreement to pay them.

However, I accept the tenant's evidence that she had not received a copy of her tenancy agreement and when confronted with a demand for the Fortis bills, took appropriate action to disavow them in a timely manner.

In this case, the written tenancy agreement is conclusive. The landlord specified which utilities the tenant had to pay and Fortis gas was not one of them.

I find that the tenant is not responsible for the gas bills for the home and that they are included in her rent.

There was no evidence or argument made by the tenant for any other of the relief specified and so I dismiss that aspect of her claim.

Conclusion

The tenant's application to cancel the ten day Notice is allowed.

There is no claim for recovery of any filing fee.

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 09, 2016

Residential Tenancy Branch