



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, MNDC, OLC, RP, AS, SS, FF, O

Introduction

On May 25, 2016, the Tenants submitted an Application for Dispute Resolution asking that two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities be cancelled. The Tenants also requested a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; an order for the Landlord to comply with the Act; an order for the Landlord to make repairs to the unit; to allow the Tenant to assign or sublet; an order for substituted service; and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

The Tenant is seeking several orders. Rule 2.3 of the Rules of Procedure permit an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Tenant's application is whether or not the tenancy will continue. Further, the remainder of the relief being sought by the Tenant is mostly monetary in nature. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's application to cancel the Notices to end tenancy, with leave to reapply for the monetary claim and other claims at a later date.

Issue to be Decided

Has the Tenant breached the *Act* or the tenancy agreement by failing to pay utilities following a written demand to do so?

Background and Evidence

The parties testified that tenancy in the upper unit at the dispute address began in April 2012, as a month to month tenancy. Rent in the amount of \$1,200.00 is payable on the first of each month. The Landlord testified that that the Tenant did not pay a security deposit or pet deposit. The Tenant A.M. testified that the Tenant S.P. did pay a security deposit that was applied to this tenancy when he moved from a different rental unit. The Tenant A.M. did not know the amount of security deposit that was paid.

Neither party provided a copy of the tenancy agreement as documentary evidence prior to the hearing. The Landlord provided a copy of the tenancy agreement via fax after the hearing ended. The written tenancy agreement provided by the Landlord does not contain any terms regarding payment of utilities.

The Landlord testified that there is an oral agreement with the Tenants that the Tenants are responsible to pay for all utility costs in the rental house.

The Tenants state they have been paying all the utility costs but continuing to pay these costs for the entire rental property is not fair.

The Landlord issued the Tenants two 10 Day Notices To End Tenancy for Unpaid Rent or Utilities.

The 10 Day Notice To End Tenancy for Unpaid Rent or Utilities dated May 24, 2016 does not indicate a monetary amount of unpaid utilities. The Notice indicates that written demand was made on the same date the Notice was issued.

The 10 Day Notice To End Tenancy for Unpaid Rent or Utilities dated June 7, 2016, indicates that the Tenants have failed to pay utilities in the amount of \$269.50. The Notice indicates that written demand was made on the same date the Notice was issued.

The Landlord testified that he did not issue the Tenants a written demand letter for payment of utilities.

Section 46 of the Act states that if a tenancy agreement requires the Tenant to pay utility charges to the Landlord, and 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.

Analysis

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

I find that the Landlord did not issue a written demand for payment of utilities and allow 30 days for the Tenant to pay as required pursuant to section 46 of the Act.

I cancel the Landlord's 10 Day Notice To End Tenancy for Unpaid Rent or Utilities dated May 24, 2016, and June 7, 2016.

The tenancy continues until ended in accordance with the Act. The Tenants are reminded that they must follow the terms of the tenancy agreement. If the Tenants wish to seek a remedy regarding the terms of the tenancy agreement they need to file for dispute resolution. The Tenants are granted leave to reapply for a hearing to deal with the utility payment issue and their claim for compensation.

Section 13 of the Act requires that every tenancy agreement entered into after January 1, 2004 must be in writing and within 21 days after an agreement is reached; the Landlord must give the Tenant a copy. I order the Landlord to send a copy of the written tenancy agreement to the Tenants by hand or by registered mail by July 8, 2016. Failure to comply with my order could result in an administrative penalty under the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful in their application, I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. The Tenants may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Landlord's 10 Day Notice To End Tenancy for Unpaid Rent or Utilities dated May 24, 2016, and June 7, 2016, are cancelled.

The tenancy continues until ended in accordance with the Act.

The Tenants may deduct the amount of \$100.00 from 1 (one) future rent payment.

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 24, 2016

Residential Tenancy Branch