



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on June 4, 2016, and to reduce rent for services agreed upon but not provided.

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 the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on June 6, 2016, a Canada post tracking number was provided as evidence of service. The Canada post track history shows the package was refused by the landlord.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. Refusal to pick up the package is not grounds for review.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on August 1, 2013. Rent in the amount of \$700.00 was payable of the first of each month. Utilities were included in rent. No security deposit was paid.

The tenant stated that the premises consist of two rental units, in which was owned by their father who passed away in January 2016. The tenant stated that when they rented their unit utilities were included in rent.

The tenant stated that the estate of the landlord cancelled the hydro services included in rent, and as a result the hydro account was put in their own name, which is also paying for the secondary unit.

The tenant stated that they have been required to make monthly installments to pay the arrears in the amount of \$706.56, as well as pay a monthly installment to pay a hydro security deposit of \$196.00. The tenant stated that they have a very low income and this is creating a hardship for their family as they can't pay for both the services and rent.

The tenant stated that they want to be allowed to reduce rent until the landlord complies with the original tenancy agreement.

Filed in support of the tenants application are the following: an agreement between the tenant and their father; shelter information which also appears to be signed by the tenant's father; and hydro invoices which are in the name of the previous landlord and then changed to the tenant's name.

Analysis

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

In this case, the tenant was served with a Notice to end tenancy. The landlord did not appear to provided evidence. Therefore, I grant the tenant's application and cancel the Notice, issued on June 4, 2016.

I also accept the tenant's undisputed testimony that hydro was included in rent. That is support by: the tenancy agreement; the shelter information; and past utilities bills, which are in the name of the deceased landlord. Further, I find it unconscionable that the tenant would be required to pay utilities for a secondary unit. I find the landlord has breach the Act and the tenancy agreement by failing to provided services agreed upon.

Therefore, I find the tenant is entitled to a rent reduction in the amount of \$700.00, for each month, retroactive to May 1, 2016, since the cost of hydro is exceeding their

current monthly rent, due to hydro arrears. Since the tenant has not paid rent for these months there is no monetary order granted to the tenant at this time.

As I have found the landlord has breached the Act by failing to provided services agreed upon, which are included in rent, **I Order, the landlord to immediately provided services by returning the hydro account to their own name** and provide a copy of that to the tenant. Should the landlord fail to comply with my Order, I grant the tenant permission to a monthly rent reduction in the amount of \$700.00 until the landlord complies with my Order.

Once the services included in rent have been reinstated by the landlord, to the tenant; the tenant is not entitled to any further rent reductions, without the permission of an Arbitrator.

Should the tenant feel money is stilled owed for overpayment of hydro that is an amount over and above the reduced rent. They are entitled to make an application under the Act for money owed. The tenant cannot withhold rent simply because they feel justified in doing so.

Conclusion

The tenant's application is granted. The Notice to end tenancy is cancelled. The tenant is entitled to rent reduction as stated above.

The landlord is to comply with my above order.

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 12, 2016

Residential Tenancy Branch