



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC RP FF O

This hearing dealt with the tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act"), seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 14, 2016 (the "10 Day Notice"), for an order directing the landlord to comply with the *Act*, to make repairs to the unit, site or property, to recover the cost of the filing fee and other unspecified relief.

The tenants and the landlord attended the teleconference hearing. The parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. I have only considered the evidence that was served in accordance with the Rules of Procedure.

Preliminary and Procedural Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 10 Day Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to set aside the 10 Day Notice and the tenant's application to recover the filing fee at this proceeding. The balance of the tenants' application is dismissed, **with leave to re-apply**.

Issue to be Decided

- Should the 10 Day Notice be cancelled?

Background and Evidence

A copy of the 10 Day Notice was submitted in evidence. The tenants received the 10 Day Notice on July 14, 2016 and disputed the 10 Day Notice within the timeline provided under section 46 of the *Act*. The amount listed as owing on the 10 Day Notice was \$472.16 in unpaid utilities with a note indicated that the tenants paid \$121.94 on July 5, 2016 and that the alleged balance owing by the tenants was \$350.22.

The landlord admitted that the utilities were not in the name of the landlord and that the tenants currently collect from other tenants of a different rental unit for the cost of utilities. The landlord also failed to submit documentary evidence such as utility bills in evidence to support the 10 Day Notice.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice issued by landlord – The landlord admitted that the utilities were not in the name of the landlord and that the tenants collect from other tenants of a different rental unit. The landlord was advised that pursuant to Residential Tenancy Branch Policy Guideline 8 – Unconscionable and Material Terms, that arranging for one tenant to collect utilities from another tenant is an unconscionable term which is unenforceable under section 6 of the *Act*. A term that is unconscionable means it is oppressive and grossly unfair to one party. As a result, 10 Day Notice is **cancelled** and is of no force or effect as the landlord may not enforce an unenforceable term.

Based on the above, **I ORDER** the landlord to immediately place all utilities in his name and collect from the tenants in accordance with the *Act*. The deadline to comply with my Order is **September 18, 2016**. Should the landlord fail to comply with my Order, the tenants are at liberty to apply for compensation under the *Act* after September 18, 2016.

As the tenants' application had merit, I grant the tenants the recovery of the \$100.00 filing fee. **I authorize** the tenants a one-time rent reduction in the amount of **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The tenants' application is successful.

The 10 Day Notice dated July 14, 2016 issued by the landlord is cancelled and is of no force or effect.

The tenants have been granted a one-time rent reduction in the amount of \$100.00 from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

The tenancy continues until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: September 7, 2016

Residential Tenancy Branch