



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KEY PACIFIC PROPERTY MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Utilities (the “10 Day Notice”), and to recover the filing fee.

The Tenant appeared for the hearing and provided affirmed testimony during the hearing as well as a copy of the 10 Day Notice prior to the hearing. However, there was no appearance for the company Landlord during the 22 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of the documents for this hearing by the Tenant.

The Tenant testified that he served a copy of the Application and the Notice of Hearing documents to the company Landlord by registered mail on August 17, 2016. The Tenant provided the Canada Post tracking number into oral evidence which is detailed on the front page of this Decision. The Tenant provided the last name of the agent for the company Landlord that he dealt with during this tenancy and testified that the Canada Post website shows that this person received and signed for the documents on August 18, 2016. Based on the undisputed evidence before me, I find the Tenant served the company Landlord with the required documents for this hearing pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”).

Issue(s) to be Decided

Has the Tenant established that the 10 Day Notice ought to be cancelled?

Background and Evidence

The Tenant testified that this tenancy began in August 2014 for a fixed term of one year which then continued on a month to month basis. The Tenant testified that he signed a tenancy agreement which required rent be paid on the first day of each month in the

amount of \$1,195.00. The Tenant testified that he was responsible for paying utilities for this tenancy.

The Tenant explained that during the tenancy the Landlord would text him the amount of utilities the Tenant owed based on calculations the Landlord had performed using utility bills the Landlord had received. The Tenant testified that the Landlord sent him a text photo of a chart that he had compiled which detailed the calculation the Landlord had performed. The Tenant stated that he did not have any issue with this and paid the amounts requested by the Landlord.

However, in April 2016, the Landlord started to request amounts for the utilities which were not consistent with previous amounts that he had paid during the tenancy. The Tenant testified that his usage of the utilities had not changed and the amount the Landlord had calculated was grossly higher than previous amounts. The Tenant testified that he asked the Landlord to provide him with the utility bills and also explained to the Landlord that his calculations that he had performed were incorrect and were done on the basis that his usage of the utilities was on a high tier consumption rate which the Tenant denied.

The Tenant testified that the meter for the rental unit is linked to other parts of the rental property which the Tenant does not rent, including a residence and a commercial property. The Tenant explained that this was the reason why the Landlord completes calculations to determine the Tenant's usage. The Tenant submitted that the amount the Landlord was seeking for the period of September 2015 to April 2016 and thereafter were so high that he requested the Landlord to have the meter checked for false readings or malfunction.

The Tenant testified that on August 9, 2016 he received the 10 Day Notice which was served personally to him by the Landlord. The 10 Day Notice shows a vacancy date of August 20, 2016 due to \$1,757.15 due on August 4, 2016. The Tenant applied to dispute the 10 Day Notice on August 11, 2016.

The Tenant testified that he wrote to the Landlord on the day he received the Notice stating that he had no issues making his utility payment but that the Landlord's amount being requested was not correct. The Tenant testified that the Landlord had not provided him with the utility bill that would verify the amounts being charged to the Landlord or how the subsequent calculations for the amount requested were made. The Tenant also testified that the Landlord has not verified that he has made efforts to ensure the amount billed to him by the utility company is correct and that there is not an error in the meter.

Analysis

I have examined the 10 Day Notice provided by the Tenant and I find the method in which it was served to the Tenant and the contents complied with the requirement of the Act. I accept the Tenant personally received the Notice on August 9, 2016 and I find that the Tenant made an Application to dispute the Notice within the five day time limit provided by Section 46(4) (b) of the Act.

Pursuant to Section 46(6) (b) of the Act, a landlord must provide a tenant with a written demand letter when making a request for unpaid utilities payable under a tenancy agreement. When a landlord receives a utility bill in a tenancy where a tenant is required to pay it or a portion of it, it is important that a landlord provides the tenant with a copy of the utility bill so that the tenant can be confident and assured that the payment being requested is a correct and true amount.

In this case, there is no evidence before me that the Tenant has been provided with a written demand letter for the unpaid utility amount detailed on the 10 Day Notice. The 10 Day Notice is not sufficient to serve as the demand letter in this case. Furthermore, there is no evidence of the utility bill(s) the Landlord relied on to come to the amount they seek to obtain from the Tenant or how the amount was derived. The Landlord also failed to provide sufficient evidence to verify that the meter is functioning properly and that the Tenant is being charged for the correct amount of consumption attributable to his actual usage.

Therefore, as I am not satisfied that the Tenant owes the Landlord the amount of utilities detailed on the Notice and there was no appearance by the Landlord to prove the amount requested on the Notice, I must now cancel it. The tenancy will resume until it is ended in accordance with the Act.

As the Tenant has been successful in cancelling the Notice, I find that the Tenant is entitled to the \$100.00 filing fee for the cost of having to make this Application. The Tenant is authorized to obtain this relief by deducting \$100.00 from a future installment of rent pursuant to Section 72(2) (a) of the Act. The Tenant may want to provide the Landlord with a copy of this Decision in order to put them on notice of the reason for the reduced rent payment.

Conclusion

The Landlord failed to appear for the hearing to prove the Notice. Therefore, the Notice is cancelled and the Tenant may deduct the filing fee from rent due to the Landlord.

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: October 07, 2016

Residential Tenancy Branch

