



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, FF

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated October 9, 2016
- b. An order that the landlord comply with the Act, regulation or tenancy agreement..
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on October 9, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord October 14, 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated October 9, 2016?
- b. Whether the tenants are entitled to an order that the landlord comply with the Residential Tenancy Act, regulations or tenancy agreement?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on December 1, 2013. Neither party provided me with a copy of the written tenancy agreement. However, the parties advised me that the written tenancy agreement did not deal with the payment of utilities. The present rent is \$957 per month

payable in advance on the first day of each month. The tenants paid a security deposit of \$478 prior to the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy dated October 9, 2016 alleges the Tenants have failed to pay utilities in the amount of \$29.40 following written demand on October 1, 2016.

The tenants testified that from 2013 to April 2016 they paid 40% of the utilities. However, from April 16, 2016 to June 15, 2016 their daughter and grandson moved into the rental unit and they agreed to pay 50% of the utilities. The daughter and grandson have since moved out. The tenants object to paying 50% of the utilities.

The landlord testified as follows:

- He believes that a 50/50 split between the upstairs and downstairs is fair and reasonable.
- He does not have the ability to determine who is living in the rental unit.
- The reason for the 40% split for the tenants was that originally the utility bill was in their name. However, since September 2015 the utility bill is in the landlord's name.

The tenants responded as follows:

- There are only two of them living upstairs while the downstairs unit has 4 people living in it.
- They seldom have visitors compared to the downstairs unit.
- They seldom cook as both are working. The downstairs tenants are cooking most meals.

After carefully considering all of the disputed evidence I determined the agreement between the parties was that the tenants would pay 40% of the utilities. This was in existence for several years. While they agreed to pay 50% of the utilities this was for the period of time when their daughter and grandson were in the rental unit. The obligation will revert to 40% now that they have left. As a result I determined there was no basis for the Notice to End Tenancy and the tenants do not owe utilities.

Secondly, the 10 day Notice is defective because it fails to properly identify the Tenant.

Thirdly, the landlord failed to comply with section 46(6) which provides as follows:

46(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) 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.

On the face of the Notice which is dated October 9, 2016 it indicates a demand was given on October 1, 2016. The landlord failed to prove a demand was given. Further the landlord failed to what the required 30 days.

I dismissed the Tenants claim that they be given space in the laundry room as the Tenants failed to prove this was part of the original agreement. They provided evidence of their demands to be given space but not that it was part of an agreement.

### Conclusion

In conclusion I ordered that the 10 day notice be cancelled but I dismissed the tenant's application for an order that they be given space in the laundry room. As the tenants have been successful with half of their claim I ordered that the landlord pay to the tenants \$50 which is half of the cost of the filing fee such sum may be taken off future rent.

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: December 06, 2016

---

Residential Tenancy Branch