



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) pursuant to section 46 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's agent, TG, testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. The tenants confirmed receipt of the landlord's evidence. In accordance with section 89 of the *Act*, I find the tenants duly served with copies of the landlord's evidence. The tenants did not submit written evidence for this hearing.

TG gave undisputed, sworn testimony that the 10 Day Notice was served to the tenants on January 18, 2017, with an effective date of February 1, 2017 by posting it on the door. In accordance with sections 88 and 90 of the *Act*, the tenants are deemed served with the 10 Day Notice on January 21, 2017, three days after posting.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled pursuant to section 46 of the *Act*? If not is the landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Act*?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The landlord's agent testified regarding the following facts. This fixed term tenancy began on May 1, 2016 with rent set at \$1,375.00 per month, payable on the first day of

each month. The landlord collected, and still holds, a security deposit in the amount of \$687.50.

The landlord issued the 10 Day Notice on January 18, 2017 for \$527.05 in unpaid utilities. The landlord's agent testified that condition number 11 on the written tenancy agreement states that the tenant is responsible for paying the utilities. The landlord submitted a copy of the written tenancy agreement in their evidence, but had only submitted the first and last page of the agreement, which only contained conditions 33 through to 44. The landlord's agent testified that the tenants have not made efforts to pay the outstanding utilities, nor have they set up a payment plan with the providers. The landlord submitted, in their evidence, copies of email correspondence to the tenants from the utilities provider notifying them of the outstanding balances. The landlord also submitted, in evidence, copies of caution notices sent to the tenants dated September 14, 2016, November 8, 2016, December 19, 2016, and January 23, 2017 regarding the outstanding utility payments.

The tenants' advocate, SW, testified in this hearing on behalf of the tenants. SW stated that condition 11 of the written tenancy agreement states that the tenants must maintain current payments. The advocate did not dispute the fact the tenants were in arrears in their utility payments, but maintained that the late payments constituted a breach of a material term of the tenancy agreement, and could not be considered unpaid rent or utilities as the utilities were payable directly to the utilities provider, and not to the landlord. Accordingly, the advocate stated that the 10 Day Notice is not valid, and should be cancelled.

The tenants did not dispute that that they were in arrears, but provided the explanation that they were unaware of any emails sent to their email address. The tenants testified that they had only become aware of the outstanding utilities after receiving the 10 Day Notice from the landlord. They stated that as of January 19, 2017 they had arranged a payment plan with the utilities provider, and that the utilities have not been disconnected. The tenants stated that they were to pay \$300.00 per month on the payment plan, with \$100.00 payable on the first of the month and \$200.00 payable on the fifteenth of the month, until the full amount is paid. They testified that the first payment was made on February 1, 2017.

The landlord's agent responded that although the utilities were payable directly to the provider, the landlord became responsible if the tenants do not pay. The landlord stated that they had confirmed as of January 24, 2017 that no payments had been made, and is therefore seeking an Order of Possession.

Analysis

Section 46(6) of the Act, states that the landlord may end a tenancy by way of a 10 Day Notice 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."

The tenants did not dispute the landlord's testimony that they were in arrears for their utility bills. Both parties also agreed that the utilities were payable directly to the utilities provider. In accordance with section 46(6) of the *Act*, I find that the 10 day Notice is not valid as the testimony of both parties is that the utilities were payable by the tenants to the utilities provider, and not to the landlord. On this basis, I am allowing the tenants' application to cancel the 10 Day Notice, and this tenancy is to continue as per the *Act*, and tenancy agreement.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee.

Conclusion

The 10 Day Notice, dated January 18, 2017, is cancelled. This tenancy is to continue as per the *Act* and tenancy agreement.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee. To implement this monetary award, I order the tenants to deduct \$100.00 from a future monthly 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: March 10, 2017

Residential Tenancy Branch