



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF SS O

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to recover the cost of the filing fee, to serve documents in a different way than required under the *Act*, and other unspecified relief.

The landlord attended the teleconference hearing. As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were both personally served by the landlord, with tenant C.E. being served on May 5, 2017 and tenant P.W. being served on May 6, 2017. The landlord affirmed that he did not have a witness when he personally served both tenants with the Notice of Hearing, Application, and documentary evidence. Based on the landlord's testimony and without any evidence to prove to the contrary, I accept that the tenants were served as claimed by the landlord. As a result, the hearing continued without the tenants present.

Preliminary and Procedural Matter

I find the landlord's request for substituted service to be moot as the landlord affirmed to having served the tenants in a method provided for under the *Act*. As a result, I have not considered the landlord's claim for substituted service.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?

- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?

Background and Evidence

The landlord affirmed that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 23, 2016 (the “10 Day Notice”) was served on tenant C.E. on March 23, 2016 and that unpaid utilities in the amount of \$1,031.50. was indicated on the 10 Day Notice and that a written demand for payment was issued to the tenants dated January 19, 2017. The landlord clarified that he did not write a demand letter to the tenants, and that instead he just copied the utility bills and gave them to the tenants.

Analysis

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

Sections 46(6)(a) and (b) of the *Act* apply and require that when a tenancy agreement requires the tenant to pay utility charges to the landlord and those utility charges are unpaid for more than 30 days after the landlord gives the tenants a written demand to pay the utility charges, the landlord may treat the unpaid utility charges as unpaid rent and may give a 10 Day Notice.

In the matter before me, I find the landlord has failed to provide a written demand to the tenants and that the 10 Day Notice is premature as a result. Therefore, I find that the 10 Day Notice served on the tenants dated March 23, 2017 is premature. Therefore, I **cancel** the 10 Day Notice as it is premature. In addition, I dismiss the landlord's monetary claim for unpaid utility charges **with leave to reapply**.

I order that the tenancy continue until ended in accordance with the *Act*.

Conclusion

The landlord's application is not successful. I do not grant the recovery of the cost of the filing fee as a result.

The 10 Day Notice dated March 23, 2017 is premature and is cancelled.

The landlord's monetary claim for unpaid utility charges is dismissed with leave to reapply.

The tenancy shall continue 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: June 9, 2017

Residential Tenancy Branch