



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, DRI, RP, CNR, LRE

Introduction

The tenants apply to cancel a ten day Notice to End Tenancy for unpaid rent and utilities dated and received November 4, 2017. They also seek to dispute a rent increase, an order that the landlord comply with the law or the tenancy agreement in some unspecified way and an order restricting the landlord's right of entry into the rental unit.

At hearing I exercised my discretion under the Rules of Procedure to deal only with the tenants' request to cancel the ten day Notice. The remainder of their claims I determine to be unrelated claims which the Rules says should not be combined together. As well, the tenants' application gives no particulars of any of those claims. It would not be fair to require the respondent landlord to defend himself against the claims at this hearing without that knowledge. I dismiss those claims with leave to re-apply.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the ten day Notice a valid Notice to end this tenancy?

Background and Evidence

The rental unit is a four bedroom house located on a property that also contains buildings housing a restaurant, with two rental units above it, and a laundromat.

The tenants rent the entire house but for a walled-off storage areas in the lower level.

The tenancy started in June 2015. There is a written tenancy agreement though neither side submitted a copy of it. It shows the rent to be \$1250.00 per month and that a \$625.00 security deposit was paid. In its original form the tenancy agreement indicates that utilities were included in rent.

The ten day Notice claims that the tenants failed to pay \$900.00 of rent that was due November 1, 2017 and \$200.00 of unpaid utilities after written demand for payment made October 1, 2017.

The landlord indicates that the \$900.00 of rent money was paid on November 6 or 7, within the five day period demanded by the Notice.

Analysis

Had the Notice been given only for rent, the payment of the rent within five days after the Notice would have automatically cancelled the Notice in accordance with s.46 of the *Residential Tenancy Act* (the “Act”). However, the Notice also claims that the tenants failed to pay \$200.00 for utilities following a written demand dated October 1, 2017.

Section 46 of the *Act* permits a landlord to end a tenancy not only for unpaid rent but for unpaid utilities as well.

There is disagreement about whether or not the tenants are responsible for utilities. I find that I do not need to address that question because the landlord admits that a written demand for the utilities was not given on October 1, 2017, or at all.

The ending of a tenancy is a very serious matter and a landlord proposing to do so must comply strictly with the requirements of the *Act*. The *Act* requires that before ending a tenancy for non-payment of utilities the landlord must demand payment in writing. The landlord has not done so here.

As a result, the Notice in question is cancelled.

Conclusion

The tenants’ application is allowed.

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 28, 2017

Residential Tenancy Branch