



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PODOLLAN'S CONSTRUCTION LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the "Act"), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on January 21, 2018.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy commenced July 2015. Rent in the amount of \$820.00 is payable on the first of each month. The tenant paid a security deposit of \$205.00.

The tenant testified that they received the Notice on January 21, 2018, for unpaid utilities. The tenant testified that they have never paid for hydro, as it was included in the rent.

The tenant testified that they spoke to the previous property manager and they were going to resolve this issue with the new property manager; however, they heard nothing further.

The landlord's agent testified that they do not pay for hydro for any of the tenants. The agent stated that they do not have any direct knowledge to what the original agreement was because the previous agent for the landlord did not fill out the tenancy agreement and they have not returned any of their calls.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows

In this case, I accept the tenant's evidence that hydro was included in the rent. The landlord provided no supporting evidence to the contrary, such as a statement from the previous landlord's agent, stating that hydro was not included in the rent, or a tenant ledger showing that hydro was collected from the tenant at some point during the tenancy.

While, I accept the evidence of the landlord's agent that no other rental units have hydro included in the rent, that is not for me to consider because each tenancy agreement, whether written or verbal, stands alone.

I find the landlord has not met the burden of proof. Therefore, I grant the tenant's application and cancel the Notice. The Notice issued on January 21, 2018, has no force or effect. The tenancy will continue until legally ended.

Conclusion

The tenant's application is granted. The Notice issued on January 21, 2018, is cancelled and has no force or effect.

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 21, 2018

Residential Tenancy Branch