



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

Dispute Codes      CNR, FFT

## Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent of Utilities (the “10 Day Notice”) and recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenants and the Landlord, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the email addresses provided in the online application system.

## Preliminary Matters

The Landlord attended the conference call via cell phone in a busy airport. Although the hearing was able to proceed as scheduled, the Landlord was muted when not providing testimony as the background noise in his location was significant and hindered the ability for all participants to hear the proceedings. I verified with the Landlord that he

could hear the proceedings while muted and the Landlord was provided ample opportunity to provide his own testimony and evidence and to respond to any evidence or testimony given while he was muted.

### Issue(s) to be Decided

Are the Tenants entitled to an order cancelling the 10 Day Notice?

Are the Tenant's entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

If the Tenants are not successful in cancelling the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

### Background and Evidence

The one year fixed-term tenancy agreement in the documentary evidence before me, signed July 13, 2013, states that the tenancy began on July 15, 2013, and that rent in the amount of \$2,300.00 is due in advance of the first day of the month. The tenancy agreement states that a \$1,150.00 damage deposit and a \$575.00 pet damage deposit were paid. The tenancy agreement also states that the residents, who are the Tenants, agree to the following:

"To pay for all utility services on the Residents' title which is 100% of the whole amount use."

The Landlord testified that the Tenants are responsible to pay for all utilities under the tenancy agreement, which includes water, sewer, and garbage disposal. The Landlord acknowledged that he did not provide the Tenants with copies of any of the utility bills for water, sewer, or garbage disposal until December 7, 2017, when he e-mailed the Tenants copies of these bills for the entire term of their tenancy so far. The Landlord stated that when the Tenants did not pay the \$5,241.08 owed for water, sewer, and garbage within 30 days of the e-mail, he served the Tenants a 10 Day Notice by posting it to their door on January 11, 2018.

The 10 Day Notice in the documentary evidence before me, dated January 11, 2018, states that the Tenants owe \$5,241.08 in outstanding utilities, for which a demand letter was given to the Tenants on December 13, 2017.

The Tenant's acknowledged receiving the 10 Day Notice on their door on

January 11, 2018, but disagreed that they owe this amount to the Landlord. The Tenants testified that they were aware at the start of the tenancy that some utilities were not included in their rent, such as heat, electricity, internet and cable. As a result, the Tenants stated that they set these utilities up in their own names and have paid for them accordingly throughout the tenancy. The Tenants testified that they have never lived in a house before and were unaware that utility fees were charged for water, sewer, and garbage disposal. Further to this, they stated that the Landlord never mentioned these fees or provided them with these bills for the first five and a half years of their tenancy. As a result, the Tenants argued that they do not owe anything for these utilities under the tenancy agreement and the 10 Day Notice is therefore invalid.

Both parties agree that as of the date of the hearing, no amounts have been paid by the Tenants for water, sewer, or garbage disposal and that rent for March, 2018, has been paid in full.

### Analysis

Based on the documentary evidence and testimony before me, I find that the Tenants were served with the 10 Day Notice on January 11, 2018, the date they acknowledged receiving it.

Section 46 of the *Act* states the following with regards to a notice to end tenancy for the non-payment of rent:

#### **Landlord's notice: non-payment of rent**

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

(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.

Although section 46(6) of the *Act* states that utility charges that are unpaid more than 30 days after the tenant is given written demand to pay for them can be treated as unpaid rent for the purposes of the 10 Day Notice, this section only applies if the tenancy agreement requires the tenant to pay utility charges to the landlord. As a result, I find that the first matter I must decide is whether the tenancy agreement requires the Tenants to pay utilities to the Landlord.

Section three of the tenancy agreement states that the residents are "To pay all utility services on the Residents' title". The Landlord stated in the tenancy agreement that the term "Residents" means the Tenants, and no title for the residents has been submitted for my review. In any event, I am not aware of any title that the residents would hold for the property as they are Tenants and not the owner of the property. Further to this, there is no explanation in the tenancy agreement as to which utilities this term refers to. The Landlord acknowledged that he did not specifically advise the Tenants at the start of the tenancy that this term included water, sewer, and garbage disposal, and the Tenants testified that their understanding was that they are only responsible to pay for things such as cable, internet, heat and electricity, which they put in their name and pay for as required.

Section 6(3)(c) of the *Act* states that a term in a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. Based on the above, I find that term three of the tenancy agreement

regarding utilities is vague to the point of uncertainty and is therefore unenforceable pursuant to section 6(3)(c) of the *Act*. As a result, I find that the Tenants are not responsible to pay for water, sewer, and garbage disposal under the tenancy agreement.

Further to this, I find it unconscionable that the Landlord waited five years, whether intentionally or by way of negligence in his duties as a Landlord, to notify the Tenants of his belief that they owed money for the above noted utilities, and in so doing, allowed the amount of these utilities to grow to such a significant degree.

Based on the above, I find that the Tenants do not owe any amount for the utilities claimed by the Landlord and I therefore order that the 10 Day Notice be cancelled. As the Tenants were successful in their Application, they are entitled, pursuant to section 72 of the *Act*, to recover the \$100.00 filing fee, which they may deduct from the next month's rent or otherwise recover from the Landlord.

### Conclusion

I order that the 10 Day Notice be cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

I order that term three of the tenancy agreement is unenforceable in relation to utility bills for water, sewer, and garbage disposal pursuant to section 6(3)(c) of the *Act*.

The Tenants are entitled to deduct \$100.00 from the next month's rent in recovery of the filing fee, or to otherwise recover this amount from the Landlord.

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 14, 2018

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Residential Tenancy Branch