



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR

Introduction

This is the Tenant's Application for Dispute Resolution made January 25, 2018, seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued January 22, 2018 (the "Notice").

Both parties attended the Hearing, which took place by teleconference, and gave affirmed testimony. The parties were advised how the Hearing would proceed and were given the opportunity to ask any relevant questions they might have about the hearing process.

The Tenant testified that she mailed the Notice of Hearing documents and copies of her documentary evidence to the Landlords, by registered mail, on January 26, 2018. The Tenant provided the tracking number for the registered mail. The Landlord CM acknowledged that he received the Notice of Hearing documents (a copy of the Tenant's Application, the Notice explaining how to sign into the teleconference, and the Residential Tenancy Branch's Information sheet with respect to service of documents and the hearing process); however CM testified that he received no other evidence from the Tenant. The Tenant then stated that she misspoke and that 2 other envelopes were mailed to the Landlords, but were returned to the Tenant, "address incomplete". CM testified that the Landlords moved in October, 2017, and that the address given on the 2 other envelopes was the Landlords' former address. I advised the Tenant that I could not consider documentary evidence that the Landlords have not seen and invited her to provide me with her evidence orally. I also advised that, should it become necessary under the circumstances, I might make further Orders with respect to the Tenant's documents.

The Landlord CM testified that he hand delivered copies of the Landlords' documentary evidence to the Tenant, but that he was uncertain of the exact date. The Tenant acknowledged receipt of the Landlords' documentary evidence.

Issue(s) to be Decided

Is the Notice a valid notice to end the tenancy?

Background and Evidence

This tenancy began on February 16th, 2007. The original tenancy agreement required the Tenant to pay utilities, which were in her name; however, in or about October of 2011, the Landlords placed the utilities in their names and the Tenant was required to pay the Landlords directly for the cost of utilities. This was done because the utility company cut off the utilities for non-payment by the Tenant.

The Tenant received the Notice on January 22, 2018. The Notice provides the following reason for ending the tenancy:

10 Day Notice to End Tenancy for Unpaid Rent or Utilities

BECAUSE:									
You have failed to pay rent in the amount of \$ that was due on <div style="display: flex; justify-content: space-between; width: 100px; margin-top: 2px;"> Day Month Year </div>					You have failed to pay utilities in the amount of \$957.67 following written demand on <div style="display: flex; justify-content: space-between; width: 100px; margin-top: 2px;"> Day Month Year </div>				

The Landlord CM stated that the Tenant made the following payments with respect to the outstanding utilities:

February 16, 2018	\$174.79
February 16, 2018	\$100.00
February 27, 2018	\$108.43
March 1, 2018	\$155.14
March 1, 2018	<u>\$160.00</u>
	\$698.36

In addition to the amounts provided above, CM testified that the Tenant also paid \$150.00 for utilities on January 20, 2018 (two days before the Notice was issued).

There have been further utility charges since the Notice was issued.

CM testified that he did not issue receipts for these payments because they were made by e-transfer rather than by cash, and therefore there was already a paper trail.

The Tenant testified that utilities were prorated each month based on annual consumption and that she was unaware of an increase that occurred in February, 2017, until December, 2017,

when the Landlord demanded immediate payment for all of the arrears. The Tenant stated she did not believe it was fair to expect her to pay the whole amount immediately because it was a lot of money to pay all at once. She testified that she thought by accepting her payments, as outlined above, the Landlords was reinstating the tenancy. The Tenant stated that she was hoping to come to an agreement with the Landlords during the Hearing with respect to a payment schedule.

The Tenant acknowledged that as of today's date (March 23, 2018), not including the pending bill for February to March, 2018, she owes the Landlords \$640.35 for utilities. The Landlord CM agreed with the Tenant's accounting of what is currently owed. He stated that he did not wish to come to an agreement and that he wanted to end the tenancy.

Analysis

The Act defines a tenancy agreement as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

[Reproduced as written.]

At the beginning of the tenancy, under the written tenancy agreement, the Tenant was required to pay for utilities directly to the utility company. However, this provision changed in or around October, 2011, whereby the utilities were placed in the Landlords' name and the Tenant started paying the Landlords directly. The tenancy has operated under this agreement for more than 7 years, and therefore I find that in or around October, 2011, the terms of the tenancy agreement changed to acknowledge that the Tenant would pay the Landlords directly for utilities after receipt of copies of the utility bills.

Section 46 of the Act provides, in part:

(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.

[Reproduced as written, my emphasis added.]

In this case, the Landlord, by issuing a notice to end the tenancy under Section 46 of the Act, is treating the unpaid utility charges as unpaid rent. When a Landlord accepted \$698.36 of the \$957.67 owed, the Landlords should have clarified with the Tenant whether or not they have reinstated the tenancy. If the Landlords did not want the tenancy to continue, the Landlords should specifically have told the tenant (or written it on a receipt) that the payments were accepted for use and occupancy only and did not reinstate the tenancy.

The Landlords accepted the payments, which were substantial, and did not communicate that the payments were being accepted for use and occupancy only. Therefore, I find that the Landlords reinstated the tenancy and the Notice is cancelled.

The Tenant was cautioned that the Landlord is entitled to \$640.35 in unpaid utilities as of March 23, 2018 (not including utilities for February and March for which a utility bill has not yet been provided). The Landlords are cautioned that the Tenant is entitled to a copy of the utility bill before the Landlords may demand payment for such bill.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued January 22, 2018, is cancelled.

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 28, 2018

Residential Tenancy Branch