



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This decision pertains to the Tenants' application for dispute resolution made on April 16, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenants seek the following relief:

1. a cancellation of the Landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"); and,
2. a monetary order granting recovery of the filing fee.

The Tenants attended the hearing before me, were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenants testified that the Notice of Dispute Resolution Hearing package (the "Notice of Hearing") was served on the Landlords by way of registered mail on April 18, 2018. Copies of Canada Post mail receipts and registered mail tracking numbers were submitted into evidence. Pursuant to section 90 of the Act, I find that the Landlords were deemed to have received the Notice of Hearing on April 23, 2018, the fifth day after it was mailed.

Ten minutes into the hearing, and after the Notice of Hearing service issues had been reviewed, the Landlord's agent (the "Agent") attended. The Agent explained that the Landlords are their parents, that they are a lawyer, and that they were attending the hearing on the Landlords' behalf as an agent. I affirmed the Agent.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application will be considered in my decision.

Issues to be Decided

1. Are the Tenants entitled to a cancellation of the Landlords' Notice?
2. Are the Tenants entitled to a monetary order granting recover of the filing fee?

Background and Evidence

The Agent testified that the Notice was served on the Tenants because of unpaid utilities, contrary to the Landlords' understanding of the terms of the signed, written tenancy agreement (the "Agreement") between the parties, and an addendum to the Agreement. The Agent testified that the amount owing for water and sewer is \$225.00.

The Agreement established a 2-year fixed term tenancy commencing March 15, 2016, and ending March 14, 2018. The tenancy has continued, and the Tenants currently reside in the rental unit. Rent is \$2,900.00, due on the 15th day of each month. Included in the rent, as indicated by checked boxes on the Agreement, is water, a refrigerator, and garbage collection.

The Agent and the Tenants both referred to a copy of an "Addendum Residential Tenancy Agreement" (the "Addendum"). The undated Addendum, which the parties agreed was signed on September 26, 2016, referred to new rent amounts, included a description of the rental unit, and referred to utilities. Specifically, paragraph 4 of the Addendum reads as follows [Reproduced as written]: "4- All utilities serves into the above rental unites will be into the Tenant name and will be paid by the Tenant."

The Agent testified that, while water was initially included in the rent, due to ever-increasing costs of water and sewer associated with the rental unit, the Landlords sought to amend the Agreement. The Agent testified that the Agreement was revised in March 2017, and that the new terms were such that the Tenants were responsible for payment of water and sewer. The Landlords did not submit any documentary evidence.

The Tenant (T.E.) disputes that they are responsible for water and sewer. The Tenants submitted into evidence a copy of the Agreement and a copy of the Addendum. T.E. testified that the first communication that they received from the Landlords regarding a sewer and water bill was on January 20, 2018. The Tenants submitted into evidence copies of e-mail communication between T.E. and the Landlord F.L., and testified about the ongoing disagreement between the parties regarding the payment of utilities.

The Tenants also submitted into evidence a copy of a municipal utility bill showing a

breakdown of water and sewer into a single-family home, and, water and sewer into a secondary suite. The billing period was January 1, 2017 to December 31, 2017. On the utility bill, there is a stamp indicating that the full amount (\$1,184.65) was paid on February 15, 2017. According to the Tenants, the Landlords paid the bill in February 2017, but only now, in early 2018, seek to recover \$225.00 as part of the costs.

In rebuttal, the Agent testified that the Landlords were uncertain about some of the details regarding the Agreement, and that the Landlords wanted to have the Tenants enter into a new tenancy agreement. The Agent testified that it is only fair for all parties that the Tenants pay for the higher costs of water and sewer.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a 10 Day Notice for Unpaid Rent or Utilities, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

The Agent claims that the Tenants are required to pay for water and sewer, and that they owe \$225.00 for water and sewer. The Landlords submitted no documentary evidence to support their claim that the Tenants are required to pay for water and sewer. Nor did the Landlords submit any documentary evidence that supported the amount claimed. The Agent referred to the Addendum, and argued that “utilities” means water and sewer. The Tenants argued that “utilities” does *not* mean water and sewer.

In cases where there is an ambiguous term of an agreement, where the parties dispute the term, and where neither party has provided additional evidence that might bring clarity to the term, I must apply the *contra proferentem* rule. *Contra proferentem* is a rule of contractual interpretation which provides that an ambiguous term will be construed against the party responsible for its inclusion in the contract. This interpretation will therefore favour the party who did not draft the term, because the party not responsible for the ambiguity should not be made to suffer for it. This rule endeavours to encourage the drafter to be as clear as possible when crafting an agreement upon which the parties will rely.

In this case, it was the Landlords who were responsible for the inclusion of the utilities term into the Addendum. Having found that the utilities term is indeed ambiguous, I

apply the rule of *contra proferentem* to that term of the Addendum and find that the term does not require the Tenants to pay for water and sewer. In any event, I also would not find that the Landlords may unilaterally change the terms of the tenancy agreement.

Taking into consideration all the evidence and testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlords have not met the onus of proving the grounds on which the Notice was based.

As such, the Landlords' Notice, dated April 15, 2018, is cancelled and of no force or effect. The Landlords are not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

As the Tenants have been successful in their application, I find that they are entitled to recover the \$100.00 filing fee. The Tenants are hereby permitted to deduct \$100.00 from their next rent payment in satisfaction of this award.

Conclusion

I allow the Tenants' application to cancel the Landlords' Notice. The Landlords' Notice, dated April 15, 2018, is cancelled and of no force or effect. The tenancy continues until it is ended in accordance with the Act.

The Tenants are entitled to recover the \$100.00 filing fee and are hereby permitted to deduct \$100.00 from their next rent payment in satisfaction of this award.

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: May 15, 2018

Residential Tenancy Branch