



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

On April 23, 2018, the Tenants applied for a dispute resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Utilities (the “Notice”) pursuant to section 46 of the Act.

At the start of the hearing, I confirmed that the Landlord attended the hearing, and that M.J. attended the hearing and advised that she was the Landlord’s book keeper. The Tenants attended the hearing on their own behalf. All in attendance provided a solemn affirmation.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?

Background and Evidence

The Landlord stated that the tenancy started on October 1, 2015 as a month to month. Rent was established at \$900.00 per month, due on the first of each month. A security deposit of \$450.00 was also paid. The Landlord stated that there was a “gentleman’s agreement” that the Tenants would owe “some” utilities; however, there was nothing stipulating this in writing. The Tenants confirmed these details.

The Landlord confirmed that the Notice was served by posting it on the Tenants' door on April 22, indicating that \$657.12 was owed for utilities after a written demand was issued on March 20, 2018. This amount of utilities was outstanding from January 2017. The Tenants confirmed receipt of the Notice.

The Tenants, in turn, paid the outstanding utilities by giving the Landlord a cheque for the full amount. The Landlord confirmed that he received this cheque on April 24, 2018 and cashed it that day. However, the Tenants took issue with the amount of utilities they owed and stated that they did not pay the utilities as the Landlord rarely provided a bill. The Landlord confirmed that he only delivered a few utility bills, that he was negligent in providing copies of them in a timely manner, and that he did not do anything about the utility issue since the start of the tenancy, but only wanted to rectify this issue recently. The Landlord hired M.J. to manage his affairs and in March of 2018, she emailed the Tenants copies of the utility bills since January 2017, a ledger outlining the outstanding utilities, and an email demand dated March 20, 2018 advising that the outstanding utilities were required to be paid by April 21, 2018. The Landlord alleged that the Tenants owed 1/3 of the utilities. The Tenants gave the Landlord a letter on March 31, 2018 stating that they do not consent to owing \$657.12 as the utility bills were not given in a timely manner. During the hearing, the Tenants advised that they were seeking monetary compensation for a return of a portion of the \$657.12 that they paid to the Landlord as it was their belief that they did not owe this entire amount.

Analysis

Upon consideration of the evidence before me, I will outline the following relevant sections of the Act that are applicable to this situation. I will provide the following findings and reasons when rendering this decision.

Section 46 of the Act allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Utilities if a written demand letter for payment of utilities is issued and the Tenants have not paid this outstanding amount within 30 days of receiving the demand.

Once this Notice is received, the Tenants would have five days to pay the utilities in full or to dispute the Notice. If the Tenants do not do either, the Notice is conclusively presumed to be accepted, the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

In this case, all parties agreed that the Tenants paid the outstanding utilities in full within five days of receiving the Notice, effectively cancelling it. As such, I am satisfied that the Notice of April 22, 2018 is of no force and effect.

With respect to the Tenants' dispute regarding whether they owed utilities or precisely how much compensation from the Landlord they are seeking, these issues were not set out in their Application and therefore, the Landlord would not have had notice these issues would be addressed in this hearing. Consequently, it would not be appropriate for me to address these issues in this hearing. As such, the Tenants were informed that their concerns with respect to these issues could be addressed at a future hearing should they wish to make another Application.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application. I order that the Tenants deduct \$100.00 from a future month's rent in satisfaction of this debt.

Conclusion

Based on the above, I hereby order that the 10 Day Notice to End Tenancy for Unpaid Utilities of April 22, 2018 to be cancelled and of no force or effect.

Pursuant to sections 67 and 72 of the *Act*, I authorize the Tenants to reduce a future month's rent by \$100.00 in satisfaction of recovery of the filing fee for this Application.

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 24, 2018

Residential Tenancy Branch