



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

This is an Application for Dispute Resolution (the "Application") brought by the Tenant requesting a cancellation of the 10-Day Notice to End Tenancy for Unpaid Utilities and for an Order requiring the Landlord to comply with provisions in the Act, the tenancy agreement and/or the Regulations. The Tenant also requests an order for payment of the filing fee.

The Landlord and Tenant both appeared for the scheduled hearing; the Tenant also had an advocate, GL, who assisted and spoke on her behalf during the hearing. I find that the notice of hearing was properly served and that evidence was submitted by all parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Tenant entitled to a cancellation of the 10-Day Notice to End Tenancy, pursuant to section 46 of the Residential Tenancy Act ("Act")?

If not, is the Landlord entitled to an Order of Possession, pursuant to section 55 of the Act?

Is the Tenant entitled to an Order requiring the Landlord to comply with the Act, Regulations and/or tenancy agreement, pursuant to section 62 of the Act?

Is the Tenant entitled to payment of her \$100.00 filing fee, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began on February 15, 2014 with the Tenant and her roommate, who later moved out. The Tenant resides in the basement suite and there are other tenants residing upstairs under a separate tenancy. The agreed monthly rent was \$1,150.00 per month, and this has been increased annually in compliance with the Act.

The tenancy agreement was filed into evidence and under paragraph 5, the Landlord points out that water and garbage collection are not checked, indicating that these items are not included in the monthly rental amount. Natural gas and electricity are also unchecked on the document. The Landlord explained that he has had about 15 sets of tenants in the house over the years, and historically the upstairs' tenants put one of those utilities into their name and the downstairs' tenants put the other utility in their name and then the costs are shared equally between the tenants in the home when bills are issued to them. This was also the arrangement for electricity and gas for the current residents of the home.

The Landlord states that in 2016, he asked the tenants to put the water bill into one of their names and to share the costs, as water expenses had increased dramatically when the upstairs tenants moved in. His email to them of February 22, 2016 states, in part:

"Last Oct. we informed you that due to increased consumption of water we would no longer paying the water bill as of Feb 1, 2016. We have received the water bill for the last quarter and will pay that bill, but require that one of you put the water bill in your name and spit with upper and lower units as with the other utilities (gas and electricity)."

The Tenant states that she refused to agree to this. The parties both agree that there were many discussions and/or email messages over the following two years as the Landlord wanted this utility charge in the name of a tenant and covered by the residents to off-set his costs. The Tenant states that the Landlord's wife told her that instead of having the utilities in the tenants' names, the rent would be increased annually to cover the increase in their costs. The Tenant states that the water bill was always in the name of the Landlord, and the Landlord stated that the City bill covers garbage collection and water on separate lines and that he has paid these charges throughout this tenancy.

On April 15, 2018, the Landlord prepared a demand letter to all residents of the rental home and copies of all bills going back to 2016, requesting full payment for water costs in the sum of \$1,370.13 from each of the downstairs' and upstairs' tenants retroactively. The Tenant replied by stating she was not agreeable to this.

The Landlord argues that the parties had always agreed that the Tenant was to pay the city charges for water and garbage collection, under the written tenancy agreement. It is his argument that he tried to work with the tenants on this situation; he made a final demand for retroactive payment which included the bills and total, then he used the eviction notice as a final option when no payment was made within 30 days.

The Tenant states she continued to deny responsibility for the water charges and was never provided with a copy of a water bill or any demand for specific payment throughout the first four years of her tenancy. She stated that she was told the annual rent increases to the current \$1,240.20 was intended to cover the Landlord's rising costs. She understood that the Landlord wanted the tenants to put this utility bill into their name as of 2016, but disputes that it was ever a term of the initial tenancy agreement or any verbal agreement that followed. The Tenant states she never agreed to assume these charges which the Landlord had always paid; she denies having utility payments outstanding and asks that the Notice to End Tenancy be cancelled so that the tenancy can continue.

Analysis

The issue before me is whether or not the 10-Day Notice to End Tenancy is valid and binding. I have reviewed the Notice and find that it complies with section 52 of the Act in form and in content. It was served on the Tenant by registered mail and she disputed the Notice by filing this Application within five days, as required by the Act. I now turn my attention to the issue of whether there are utility charges owing from this Tenant to the Landlord.

The parties provided some undisputed evidence with respect to payment of other utility bills, for example, the parties intended to have the tenants put the gas and electrical bills into their names and to share the charges between the upstairs and downstairs suites. The Landlord states this has always been the case with all his tenants going back many years, and this was the Tenant's understanding as well. Furthermore, the upstairs and downstairs tenants did put gas and electrical bills into their names and shared the costs, without any dispute.

However, it is clear that due to rising costs, the Landlord made a determination in late 2015 to change the terms of the tenancy and to have the tenants also place the water/garbage collection bill into their name and to have the tenants share the costs. His email of February 22, 2016 appears to confirm that this is a new charge to the tenants and a new request which would alter the terms of the tenancy agreement. There is no evidence to suggest that either party treated water and garbage collection bills from the City to be the responsibility of the tenants up to that point in time, the Landlord having always paid that bill and no bill or demand for payment ever having been made on the Tenant.

I find that the discussions between the parties thereafter were an attempt to negotiate an amendment to the initial terms of the tenancy agreement. The Landlord specifically wanted the bill to go into the name of the one of the tenants and this Tenant clearly refused. She was not willing to alter the terms of the tenancy with respect to these additional utility charges.

This issue is further complicated by the fact that section 46 of the Act (which allows an eviction for nonpayment of utilities) specifically states that a Tenant must have agreed to pay to the Landlord the utility charge:

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. [bolding added]

The Landlord has the burden of proving that there was an agreement to have this Tenant pay him the utility charges in question. I find that the Landlord has failed to do so. The agreement does not stipulate that the Tenant agrees to pay certain charges to the Landlord for water or garbage collection; no demand or bill was ever presented to the Tenant from 2014 through 2018 with respect to such charges. This was not a bill the Landlord historically required tenants to cover.

The language of the February 2016 email from the Landlord makes it clear that this is to be a new utility charge that he wanted the tenants to cover going forward; he acknowledges that this charge was his responsibility up to that point in time. There is no evidence to suggest this Tenant ever accepted that additional charge, and, in fact, the evidence clearly suggests otherwise.

Even if I had found grounds to suggest this Tenant had agreed to pay these utility charges in the tenancy agreement, the doctrine of estoppel would likely deny the Landlord to go back to the start of the tenancy years later to collect retroactively. If the Landlord had truly intended for this Tenant to pay the City water and garbage bill, he would have addressed payment of that bill early on in the tenancy in 2014, not in 2016 with a request that she put the bill into her name. The presentation of the bills in 2018, four years after the tenancy began, suggests it was never the intention of either party to have this Tenant pay those charges at the outset of the tenancy, and that this was a new request which the Landlord was attempting to negotiate to offset his expenses.

The section 46 requirement is quite specific; an eviction is only justified if a Tenant has agreed to pay a Landlord certain utility charges and I find that the evidence does not support this. Accordingly, I order that the Notice to End Tenancy dated May 18, 2018 be cancelled and is of no force or effect. The tenancy shall continue until terminated by either party with proper notice.

The Tenant states that the request in her Application for an Order requiring the Landlord to comply with the Act, Regulations and tenancy agreement relates only to the issue of payment of the utilities, as discussed above. Section 14 of the Act requires any amendment to a tenancy agreement to be with the consent of both parties; changes to the payment of a specific bill (in this instance, the water/garbage collection bill that had previously always been paid by the Landlord) should be in writing and signed by both parties.

It is often the case that an addendum to a tenancy agreement will contain any requirements of a tenant to pay utilities. This avoids any confusion about verbal agreements that may be made during a tenancy. I am in agreement with the Tenant; the Landlord must obtain written and signed consent in order to compel this Tenant to pay him water and garbage collection charges or to put that bill into her name to cover future charges incurred.

As the Tenant was successful in her Application, I am awarding the \$100.00 filing fee.

Conclusion

The 10-Day Notice to End Tenancy dated May 18, 2018 is cancelled and of no force or effect. The tenancy shall continue until terminated by either party with proper notice.

The Tenant shall receive a \$100.00 credit against her next rent payment to recover her filing fee. 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: July 19, 2018

Residential Tenancy Branch