



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT

Introduction

This hearing was convened in response to an application by the tenant filed July 17, 2018 to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice), dated July 12, 2017, and to recover their filing fee.

The tenant provided evidence the landlord was sent the Notice of Hearing package inclusive of their application and evidence by registered mail to the address the landlord provided as their address for service on the subject 10 Day Notice. The tenant provided proof that the registered mail was returned to the tenant as undeliverable and marked by Canada Post as the named intended recipient (landlord's name) as moved. I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the *Residential Tenancy Act* (the Act) the landlord did not participate in the conference call hearing. The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the 10 Day Notice to End dated July 12, 2018 be set aside? If not, is the landlord entitled to an Order of Possession pursuant to Section 55(1) of the Act?

Background and Evidence

The relevant evidence in this matter is as follows. The tenant received a 10 Day Notice to End Tenancy for unpaid utilities on July 12, 2018. The 10 Day Notice states the tenant failed to pay \$190.00 for utilities following a written demand given on July 02, 2018 – as stated. The tenant's evidence includes a copy of an invoice dated May 10, 2018 from Fortis BC Natural Gas on the landlord's account and in the amount of \$212.73. The tenant testified that under the tenancy agreement they are not

responsible for natural gas consumption as it is included in the rent. They testified that they are solely responsible for electrical usage. The tenant provided a copy of the tenancy agreement as proof, which indicates that *natural gas* is included as part of the payable rent. The tenant further testified that they have tried to communicate with the landlord on this matter but have been rebuffed.

Analysis

On preponderance of the available evidence in this matter I find that the tenant has provided sufficient evidence that under the tenancy agreement they are not responsible for the payment of the natural gas utility as such utility is included within the payable rent. As a result, I find that the landlord's 10 Day Notice to End for unpaid utilities dated July 12, 2018 is invalid and therefore **I Order** the Notice **cancelled** and having no effect.

As the tenant was successful in their application they are entitled to recover their filing fee.

Conclusion

The tenant's application is granted. The Notice to End in this matter is cancelled and of no effect and the tenancy continues until it ends in accordance with the Act.

I Order that the tenant is permitted to make a one-time deduction of **\$100.00** from a future rent in full satisfaction of recovering their filing fee for this matter.

This Decision is final and binding.

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: September 11, 2018

Residential Tenancy Branch