



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT
 MNRL-S, OPU, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on October 17, 2018. The Tenant applied to cancel a 10-Day Notice for Unpaid Rent or Utilities (the “Notice”) issued on October 14, 2018, and to recover the filing fee for his application. The Landlords’ Application for Dispute Resolution was made on September 28, 2018. The Landlords applied to enforce a 10-Day Notice for Unpaid Rent (the 10-Day Notice) issued on October 14, 2018, for a monetary order for unpaid rent and utilities, and to recover the filing fee paid for their application.

Both the Landlords and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice to End Tenancy issued on October 14, 2018, be cancelled?
- If not, are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a monetary order for unpaid rent and utilities?
- Are the Landlords entitled to recover the filing fee for this application?
- Is the Tenant entitled to recover the filing fee for his application?

Background and Evidence

Both parties agreed that the Tenant moved into the rental unit on March 1, 2017, under a one-year fixed term tenancy. The parties also agreed that at the end of the first year the parties entered into a new one-year fixed term tenancy that started on March 1, 2018. Under the new tenancy agreement rent in the amount of \$1,600.00 is to be paid by the first day of each month and that the Tenant paid the Landlord an \$800.00 security deposit. The Landlords provided a copy of both tenancy agreements into documentary evidence.

The Landlords testified that in January 2018 they had issued a demand letter to the Tenant to pay a \$393.70 utility bill. The Landlord testified that they had spoken to the Tenant several times regarding the outstanding water bill between but that the Tenant has never paid the bill.

The Landlords testified that they issued the Tenant the Notice to End his tenancy on October 14, 201, indicating that there was a \$971.15 utility bill outstanding. When asked the Landlords confirmed that they had not issued a written demand for payment for the utilities since the parties signed the new tenancy agreement.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent or utilities a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute

Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted the Notice under section 46(5).

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.

I find that the Tenant received the 10-Day notice on October 16, 2018, and did apply to dispute the Notice within the legislated timeline.

I accept the testimony of the Landlords that they have not issued a written demand for the outstanding utilities, to the Tenant, since signing a new tenancy agreement with the Tenant.

Pursuant to section 56(6), I find that the Tenant has not been given a written demand for payment of the utilities, for this tenancy, as required pursuant to section 46(6) of the *Act*. Therefore, I find that the Landlords were premature in issuing the Notice to End Tenancy before providing the Tenant with the final opportunity to pay the outstanding utility bill. Therefore, I find that the Notice, dated October 14, 2018, does not comply with section 46 of the *Act*.

Accordingly, I grant the Tenant's application to cancel the Notice dated October 14, 2018, and I find the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the *Act*.

As I have found the Landlords' Notice to be of no effect, I must dismiss the Landlords' application for an order of possession and a monetary order to enforce their Notice.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in his application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for his application. The Tenant is granted permission to take a one-time deduction of \$100.00, from his next month's rent.

Conclusion

The Tenant's application to cancel the Notice is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's rent.

I dismissed the Landlords' 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: November 27, 2018

Residential Tenancy Branch