



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP

Introduction

On November 6, 2018, the Tenant made an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 4, 2018.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence 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.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenant's request for repairs or emergency repairs of the rental unit is dismissed with leave to reapply.

Issues to be Decided

- Should the 10 Day Notice dated February 10, 2017, be cancelled?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The parties testified that the tenancy began in September 2017, on a month to month basis. Rent in the amount of \$1,300.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$650.00. The Landlord and Tenant did not provide a copy of a tenancy agreement. The Tenant testified that the Landlord never provided her with a copy of a tenancy agreement. The Landlord testified that a tenancy agreement was prepared; however the Landlord's copy was destroyed as a result of water damage.

The Landlord testified that the tenancy agreement requires the Tenant to pay a portion of utilities on a 50/ 50 basis with the other unit. The rental property has two rental units.

The Tenant acknowledged that she understood at the start of the tenancy that she would be responsible for a portion of utilities; however, she submits that the Landlord never produced a tenancy agreement that provided the percentage of utilities that she is responsible to pay; and the Landlord never provided her with a utility bill until 12 months into the tenancy.

10 Day Notice to End Tenancy for Unpaid Rent or Utilities

The Landlord testified that the Tenant failed to pay the rent owing under the tenancy agreement for the month of November 2018.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 4, 2018, ("the 10 Day Notice").

The Landlord testified that the Tenant was served with the 10 Day Notice by posting the Notice to the Tenant's door. The 10 Day Notice indicates that the Tenant has failed to

pay rent in the amount of \$1,300.00 which was due on November 1, 2018. The Notice also indicates that the Tenant has failed to pay utilities in the amount of \$884.13 following written demand on November 4, 2018. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant disputed the 10 Day Notice on November 6, 2018, within the required time period.

The Landlord testified that the Tenant did not pay all the rent due under the tenancy agreement within five days of receiving the 10 Day Notice. The Landlord testified that the Tenant paid \$1,190.89 on November 9, 2018. The Landlord testified that on November 11, 2018, she received the remaining \$110.00 owing for rent. The Landlord is seeking to enforce the 10 Day Notice to end the tenancy and requests an order of possession for the rental unit.

In reply, the Tenant testified that she paid the entire amount of rent owing for November 2018, within five days of receiving the 10 Day Notice. The Tenant testified that she received the 10 Day Notice posted to her door on November 4, 2018. The Tenant testified that on November 8, 2018, she paid the entire rent owing to the Landlord at the Landlord's residence. She testified that she handed the rent to the Landlord Mr. P.S.

The Tenant produced a witness Ms. B.M. who provided affirmed testimony that she was with the Tenant on November 8, 2018, when the entire rent owing was paid to the Landlord.

The Landlord Ms. B.M. acknowledged that the Tenant paid rent on November 8, 2018; however, she testified that the full amount of rent owing was not paid and that \$110.00 was outstanding. The Landlord testified that the remaining \$110.00 was paid by the Tenant on November 11, 2018 by e-transfer.

In reply, the Tenant testified that she believes the Landlord has confused the \$110.00 payment with a payment she sent the Landlord in December 2018.

The Tenant offered to provide her proof of rent payment following the hearing. The Landlord offered to provide a copy of the e-transfer email documentation.

Following the hearing, the Tenant provided a copy of documents showing three cheques made out to be paid to the Landlord Mr. P.S. in the amount of \$1,300.00. The

cheques are all dated November 8, 2018. The Landlord did not provide an e-transfer email document as expected. The Landlord Mr. P.S. provided a hand written note indicating that the balance of \$110.00 was paid into his bank account on December 3, 2018.

Analysis

Section 46 (6) of the Act provides that within 5 days after receiving a notice under this section (10 Day Notice) , the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46 (6) of the Act provides that if a tenancy agreement requires the Tenant to pay utility charges to the Landlord, and 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.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I accept the Tenant's evidence that she paid the entire rent owing on November 8, 2018. I find that the Tenant paid the rent within five days of receiving the 10 Day Notice.

With respect to unpaid utilities, the amount of utilities provided on the 10 Day Notice cannot be considered to be rent until more than 30 days after the Tenant is given a written demand. The Landlord indicated that written demand was made on the same date that the 10 Day Notice was issued. I find that the amount of utilities listed on the 10 Day Notice cannot be considered to be unpaid rent.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 4, 2018 is set aside.

The tenancy will continue until ended in accordance with the Act.

I am not making a determination on the percentage of utilities that the Tenant owes under the tenancy agreement. The Tenant's application before me does not include a request to determine that issue. I note that the Landlord could not provide a copy of a tenancy agreement, and while the Tenant indicated that she was aware she would have to pay some utilities, she testified that there is another rental unit on the property and her amount was never agreed upon or put into writing. If the parties cannot reach an agreement on the utility issue, the parties can apply for dispute resolution to determine the matter.

Conclusion

The Tenant received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 4, 2018, and paid the rent owing within five days of receiving the 10 Day Notice. The amount of utilities indicated on the 10 Day Notice cannot be considered as unpaid rent.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 4, 2018 is cancelled.

The tenancy will continue until ended in accordance with the Act.

The Tenant has leave to reapply for an order for that the Landlord to make repairs to the unit or property.

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: December 14, 2018

Residential Tenancy Branch