



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR FFT OLC**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Utilities (“Ten-Day Notice”) pursuant to sections 46(4) and 55;
- An order requiring the landlord to comply with the *Act*, regulation and tenancy agreement pursuant to section 62;
- An order for reimbursement of the filing fee pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The tenant filed an Amendment to an Application for Dispute Resolution submitted February 20, 2019 adding to her claim an application to cancel an additional 10 Day Notice to End Tenancy for Unpaid Utilities; the parties agreed the landlord served the 10 Day Notice to End Tenancy for Unpaid upon the tenant on February 18, 2019, after the commencement of this matter. The parties agreed the subject of this arbitration hearing concerned this 10 Day Notice to End Tenancy for Unpaid Utilities as the most recent of the landlord’s notices to end tenancy.

The landlord acknowledged receipt of the tenant’s Notice of Hearing, Application for Dispute Resolution and Amendment. The tenant acknowledged receipt of the landlord’s materials. Neither party raised issues of service. I find each party served the other in accordance with the *Act*.

I note that Section 55 of *Act* requires that when a tenant submits an application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue

Section 2.3 of the *Residential Tenancy Branch Rules of Procedure* (the “*Rules*”) states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the following claims are not related to the tenant’s application to the cancel the Ten-Day Notice and are therefore dismissed with leave to reapply:

- An order requiring the landlord to comply with the *Act*, regulation and tenancy agreement pursuant to section 62.

Issue(s) to be Decided

Is the tenant entitled to:

- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Utilities dated and served on February 18, 2019 (“Ten-Day Notice”) pursuant to sections 46(4) and 55;
- An order for reimbursement of the filing fee pursuant to section 72.

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision. I refer only to relevant and admissible evidence.

The parties agreed they entered into a tenancy agreement commencing December 1, 2013. Monthly rent is \$1,793.65 payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit in the amount of \$800.00 which the landlord holds.

Copies of two tenancy agreements signed by the parties were submitted as evidence. Both are dated November 17, 2013 and both are for monthly rent of \$1,600.00. One, on

a RTB standard form, does *not* require the tenant to pay for water. The other, on a purchased form, *does* require the tenant to pay for water. The parties are in dispute as to which tenancy governs their agreement and the circumstances surrounding the signing of the agreements. In particular, the parties dispute whether the tenant is required to pay the water bills for the unit.

The parties agreed the landlord served the tenant with the Ten-Day Notice on February 18, 2019 by posting it to her door, thereby effecting service on February 21, 2019, claiming outstanding utilities of \$2,075.72 pursuant to a written demand on January 14, 2019.

The Ten-Day Notice provided that, within 5 days after service, the tenant may pay the rent or dispute the Ten-Day Notice by filing an Application for Dispute Resolution. If the tenant does not do so, the Ten-Day Notice stated the tenant is presumed to accept the Ten-Day Notice and must move out of the rental unit by the date on the notice, being ten days after service. The Ten-Day Notice contained an effective vacancy date of March 3, 2019. The parties agreed the tenant complied with the *Act* in filing an Application for Dispute Resolution.

The landlord seeks an order of possession based on a Ten-Day Notice issued because of the tenant's failure to pay utilities as required.

The parties agreed the tenant has never paid the water bills. The tenant claimed that she had a verbal agreement with the landlord that the tenant did not have to pay the water utility. The landlord denied this. She stated that, unbeknownst to her, her son or agent was paying the outstanding water account when he paid the annual property taxes. Therefore, she did not learn until recently that the tenant had not been paying the water bills throughout the tenancy. Accordingly, the landlord issued a demand letter to the tenant on January 14, 2019 for the total of all water bills for the over 5 years of the tenancy.

The parties agreed they have an acrimonious relationship. The tenant stated she has been served with notices to end the tenancy "dozens of times"; she claimed to have had a "dozen" arbitration hearings with the landlord.

During the hearing, the tenant agreed to pay the water bills from the date of the hearing, February 25, 2019, going forward.

However, the tenant stated she was not responsible to pay the water invoices up to the date of the hearing.

Analysis

I have reviewed all documentary evidence and testimony.

In this case, there is dispute between the parties as to whether the tenant has an obligation to pay the water bill under the terms of the agreement between the parties. I have considered the competing evidence of the parties. I find it compelling that the landlord has never demanded that the tenant pay the water bill throughout a tenancy that has been ongoing for over five years. I find the landlord has not met the burden of proof on a balance of probabilities that it was a term of the tenancy agreement that the tenant would pay for the water for the unit.

I further find that the legal principle of estoppel applies to this application. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. To return to a strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct and are not going to strictly enforce the right previously waived or not enforced.

I find the landlord established a pattern of not requiring the tenant to pay the water bill. I find the tenant relied on this pattern and has never paid the water bill. I find the landlord is estopped from claiming reimbursement of the water bills from the beginning of the tenancy to February 25, 2019, the date on which the tenant agreed to begin paying the water bill for the unit.

I therefore, I grant the tenant's application to set aside the Ten-Day Notice. I order that the tenancy continue until it is ended in accordance with the agreement, the *Act* and the regulations.

As the tenant's application is successful, I grant her reimbursement of the filing fee in the amount of \$100.00. Pursuant to section 72, I direct that the tenant may deduct this amount of \$100.00 from the rent due after this decision on a one-time basis only.

Conclusion

The tenant's application to cancel the Ten-Day Notice for non-payment of utilities throughout the tenancy to February 25, 2018 is granted. The Ten-Day Notice is of no effect and the tenancy continues until ended pursuant to the terms of the agreement, *Act* and regulations.

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: March 14, 2019

Residential Tenancy Branch