



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, OPR, FF

Introduction

The landlord and the tenants convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid utilities; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for unpaid Utilities (the "Notice") issued on March 1, 2019;
2. To have the landlord provide services or facilities required by the tenancy agreement;
3. For a monetary order for money owed or monetary loss; and
4. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Preliminary and procedural matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants' request to set aside the Notice to End Tenancy and the tenant's application to recover the filing fee at these proceedings. The balance of the tenants' application is dismissed, with leave to reapply.

Issue to be Decided

Should the Notice be cancelled?
Is the landlord entitled to a monetary order?

Background and Evidence

The tenant testified that they received the Notice on March 1, 2019, by mail. The tenants deny they owe the landlord utilities.

The landlord testified that the tenants are in breach of the addendum to their tenancy agreement that was signed on October 5, 2017. The landlord stated that the previous landlord created the addendum, as they wanted that term in the agreement when they purchased the property on October 30, 2017.

The landlord testified that the addendum states in part the following,

“Should the tenant require the use of electricity, water, or sewer hook-ups to the trailer, the tenant and the landlord will agree upon an amount that reflects fair market value for the time of the use.”

The landlord testified that the tenants did not asked them in advance to use the electricity and no agreement was reached. The landlord stated that they determined the value of the utilities at \$2.00 per day from November 1, 2017 to August 2018. The landlord stated that the tenants did not pay the amount owed; however, they made a payment of \$75.00.

The tenants testified that they have had use of the utility for their trailer prior to the landlord taking possession of the property and they were never required to pay any

amount. The tenants stated that there was never an agreement with the new landlord to pay \$2.00 per day. The tenants stated that if they knew that this was a problem with the new landlord, that they would have moved their trailer elsewhere, which they have done.

The tenants testified that the landlord should have been aware that they were using the power when they purchased the property as the electrical cord can be easily seen and they have been to the property on many occasions.

Analysis

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

In this case, I am not satisfied that the tenants have breached the addendum that was made on October 5, 2017, between the previous landlord and the tenants.

The tenants were using the utilities prior to the new landlord taking possession and the addendum was in effect at that time. The landlord provided no evidence on the agreement the tenants had with the previous landlord on payment, which would have continued with the tenancy. Further, if the tenants were using the electricity without payment during the course of their tenancy, I find the tenants would have the right to reply upon the actions of the landlord.

In addition, even if I accept the tenants were in violation of the addendum, which I do not, I find the addendum is unclear as to any agreed upon amount. When an agreement is unclear, it is unenforceable unless clarified by an Arbitrator.

Since there was no agreed upon an amount for the use of the electricity, I find the landlord cannot simply pick an amount that they feel they are entitled too. The landlord could have made an application for dispute resolution to have an amount set by an Arbitrator, and if the tenants failed to pay the amount ordered, the landlord then would have grounds to end the tenant for unpaid utilities; however, that is not the issue before me.

Furthermore, if the tenants were using electricity for their trailer in November 2017, it was at that time the landlord should have addressed this issue; rather than to let the matter continue until August of 2018 and then attempt to evict the tenants in March 2019. I find this to be unreasonable.

Based on the above, I am not satisfied the tenants were required to pay the amount claimed by the landlord. Therefore, I find the Notice is not valid and unenforceable.

Therefore, I grant the tenants' application to cancel the Notice. The tenancy will continue. As the tenants were successful with their application, I authorize the tenants a onetime rent reduction in the amount of \$100.00, from a future rent payable to the landlord to recover the cost of the filing fee from the landlord. This is in full satisfaction to recover the filing fee.

The landlord's application is dismissed. The landlord is not entitled to recover the filing fee from the tenants.

Conclusion

The Notice is cancelled and has no force or effect. The tenancy will continue. The tenants are entitled to a onetime rent reduction in the amount of \$100.00 to recover the cost of the filing fee from the landlord.

The landlord's application is dismissed without leave to reapply.

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: May 1, 2019

Residential Tenancy Branch