



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CTI SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

On May 24, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Utilities (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "*Act*").

The Tenants attended the hearing and J.G. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenants advised that they served the Landlord the Notice of Hearing package and evidence, and J.G. confirmed that this package was received. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

J.G. advised that there was no evidence submitted on this file for consideration.

I note that Section 55 of the *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 complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2018. J.G. stated that rent was currently established at \$2,400.00 per month, due on the first of each month. However, the Tenants advised that rent was actually \$2,300.00 but the Landlord charged them \$100.00 per month extra as a pet damage deposit. A tenancy agreement was not submitted as documentary evidence to confirm any of these details and no findings were made on this point. All parties agreed that a security deposit of \$1,200.00 was paid. All parties confirmed that there was no written term in the tenancy agreement requiring the Tenants to pay utilities.

J.G. advised that the Tenants were served the Notice on May 23, 2019 by posting it on the Tenants' door and they confirmed that they received this Notice. The effective date of the Notice was noted as June 2, 2019.

J.G. noted that \$191.63 was owing for utilities following a written demand for payment on April 12, 2019. He advised that this written demand was in the form of a letter provided to the Tenants on April 12, 2019 and Tenant T.E. signed it. A copy of this written demand was submitted as documentary evidence for consideration.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 46 of the *Act* states 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."

As the undisputed evidence is that the Landlord provided a written demand for utilities on April 12, 2019 and then served the Notice on May 23, 2019, I am satisfied that the Landlord complied with the *Act*. However, as there is nothing in writing requiring the Tenants to be responsible for any utilities, I am not satisfied of the validity of the Notice. Therefore, I find that the Notice of May 23, 2019 is cancelled and of no force and effect.

Conclusion

Based on the above, I hereby order that the 10 Day Notice to End Tenancy for Unpaid Utilities of May 23, 2019 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: July 8, 2019

Residential Tenancy Branch