



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR OLC**

Introduction

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

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- An order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act pursuant to section 62.

The landlord and the tenant attended. Each party acknowledged receipt of the other party's evidence; each party had the opportunity to call witnesses and present affirmed testimony and written evidence. No issues of service were raised. I find the tenant served the landlord in accordance with section 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- An order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act pursuant to section 62.

Background and Evidence

The parties agreed that the tenancy began on April 1, 2016 and is ongoing as a month-to-month tenancy. Rent is \$850.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant paid a security deposit in the amount of \$425.00 and a pet deposit in the amount of \$425.00 for a total of \$850.00 which the landlord holds. The unit is a basement suite and there is another unit in the building. There is one meter for electricity consumption for the building.

A copy of the agreement between the parties was submitted as evidence which is silent on the apportioning of the utility bill.

The dispute originates with disagreement between the parties related to the apportioning of utility bills between the units in the building. The tenant acknowledged that she has in the past had a verbal agreement with the landlord in which she agreed to pay 40% of the utilities bill. However, the tenant objected to this apportioning due to her allegations of recent high electricity consumption by the other apartment.

The landlord did not issue a demand for payment of utilities. The landlord issued a Ten-Day Notice on June 1, 2019 which stated the tenant owed utilities in the amount of \$319.80. A copy of the Ten-Day Notice was submitted as evidence.

The tenant provided no evidence in support of her claim under section 62. The parties agreed the landlord continued to provide uninterrupted electricity service to the unit.

Analysis

This is an application by the tenant to cancel a Ten-Day Notice which was issued for outstanding utilities only as well as an application to compel the landlord to provide utilities.

At the outset, the landlord acknowledged that he did not comply with section 46(6) which requires the landlord to issue a written notice to the tenant that utilities are outstanding; this written demand for payment must be given to the tenant 30 before the issuance of the Ten-Day Notice. The relevant section of the Act states:

Landlord's notice: non-payment of rent

46(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.*

As the landlord has not complied with section 46(6) by failing to provide written notice to the tenant of the outstanding utilities, I grant the tenant's application to dismiss the Ten-Day Notice. The tenancy shall continue in accordance with the tenancy agreement and the *Act*.

As the tenant has submitted no evidence in support of her application under section 62, I dismiss that aspect of her claim with leave to reapply.

Conclusion

The Ten-Day Notice dated July 1, 2019 is dismissed without leave to reapply. The tenancy shall continue until ended in accordance with the tenancy agreement and 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 19, 2019

Residential Tenancy Branch