



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX MID-ISLAND REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

On May 7, 2019, the Tenant 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 Tenant attended the hearing with T.W. as her advocate. P.R. and C.S. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenant confirmed that she served the Landlord the Notice of Hearing package and evidence by registered mail on May 8, 2019 and the Landlord 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.

The Landlord advised that their evidence was served to the Tenant by hand on or around June 6, 2019 and the Tenant confirmed that she received this evidence. Based on this undisputed testimony, as service of this evidence complies with Rule 3.15 of the Rules of Procedure, I have accepted the Landlord’s evidence and will consider it when rendering this decision.

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

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is 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 20, 2017. Rent was currently established at \$780.00 per month, due on the first of each month. A security deposit of \$375.00 was paid.

The Landlord advised that the Tenant was served the Notice on April 25, 2019 by registered mail and the Tenant confirmed that she received this Notice on May 2, 2019. The effective date of the Notice was noted as May 13, 2019.

The Landlord noted that \$1,125.75 was owing for utilities following a written demand for payment on April 1, 2019. The Landlord advised that this written demand was in the form of an email sent on April 1, 2019; however, a copy of this written demand was not 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 1, 2019 and then served the Notice on April 25, 2019, I am satisfied that the Landlord did not comply with the *Act*, as this Notice was served too early. As such, I am not satisfied of the validity of the Notice as it does not comply with Section 46. Therefore, I find that the Notice of April 25, 2019 is 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 April 25, 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: June 20, 2019

Residential Tenancy Branch