



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the 10 day Notice to End Tenancy dated June 10, 2019

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on June 10, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the Tenant was sufficiently serve on the landlord by mailing, by registered mail to where the landlord carries on business on June 21, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated June 10, 2019?

Background and Evidence:

On September 15 2017 the parties entered into a written tenancy agreement that provided that the tenancy would start on September 15, 2017 and continue on a month to month basis. The rent was \$1100 per month payable in advance on the last day of the previous month. The tenant(s) paid a security deposit of \$550 at the start of the tenancy. The rent has been increased to \$1144 per month.

The tenancy agreement indicated that heat, light and water was not included in the rent. At the time the parties contemplated that the tenant would put the gas bill in her name.

The gas company would not permit the tenant to put the gas in her name. There is an exchange of text messages on September 29, 2017. The landlord agreed to put the gas bill into its name. The tenant asks if the landlord was going to give her a gas bill every month to pay. The landlord responded by saying the tenant was to add another \$105 to her rent. The text states It's on an equal payments. I can show you the bill when we get it in about 2 or 3 months. The tenants responded saying that's ok. She further responded saying "I wanted to put it in my name but the gas co. said because of the other tenants that lived her I couldn't."

The tenant paid the additional \$105 per month.

In May 2019 the landlord realized the gas bill was exceeding the amounts the tenant was paying. In a text message at the end of May the landlord advised the tenant she would have to pay an additional \$246 per month to cover the usage.

The landlord provided evidence that as of June 10, 2019 the tenant owes an additional \$1335.41 for the gas usage.

The Advocate for the Tenant submits as follows:

- That the parties agreed the tenant would pay \$105 per month for the gas usage until varied by agreement between the parties after reviewing the gas bills.
- The landlord failed to provide the tenant with the gas bills until provided with the materials in this hearing.
- The landlord was aware increases in the equal payment plan rates but failed to convey that information to the tenant.
- The tenant is on disability with limited and is not able to pay the increased amount.
- The landlord failed to give the Tenant a written demand prior to serving the 10 day Notice to End Tenancy.

The Law:

Section 46 (6) of the Residential Tenancy Act provides as follows:

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.

Analysis:

After carefully consider all of the evidence I made the following determinations:

- I determined the written tenancy agreement was varied by an agreement between the parties that as the tenant could not put the gas bill into her name the landlord would put it in his name and the tenant would pay the cost of the gas to the landlord.
- I do not accept the submission of the Advocate for the Tenant that the parties agreed to limit the Tenant's obligations to pay for gas to \$105 per month until varied by agreement between the parties. I determined the agreement provides that the Tenant was to pay the entire gas bill. The parties agreed the tenant would make monthly payments but this was always on the basis that this was an equal payment as determined by the gas company and that there would be adjustments to reflect the actual cost of the gas.
- While it is unfortunate the landlord failed to advise the tenant earlier that May 2019 the Tenant failed to provide any legal arguments which would act as a defense to the landlord's claim against the tenant to reimburse the landlord for the cost of the gas.
- However, I determined the landlord failed to comply with the Act which requires that the landlord make a demand 30 days prior to issuing the 10 day notice. I do not consider the exchange of e-mails a demand as set out in the Act. The landlord did serve a letter demanding payment when it served the Notice. However, the Act requires that before the landlord can treat utility charge as unpaid rent the landlord must wait 30 days after written demand was made. This was not done.

Determination and Orders:

As a result I ordered that the Notice to End Tenancy dated June 10, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

This decision is final and binding on the parties.

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: August 02, 2019

Residential Tenancy Branch