



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WIDSTEN PROPERTY MANAGEMET
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For first file listed: CNR, RP, LRE, OLC,
For second file listed: ERP

Introduction

This hearing was convened as the result of the tenants' two applications for dispute resolution under the Residential Tenancy Act (the "Act").

In the first listed application, the tenants applied for an order cancelling the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), for an order requiring the landlord to make repairs to the rental unit, for an order suspending or setting conditions on the landlord's right to enter the rental unit, and for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement.

The tenants filed a second, unrelated application for dispute resolution, which the Residential Tenancy Branch ("RTB") scheduled on the same date and time as their first application. In this application, the tenants sought an order requiring the landlord to make emergency repairs to the rental unit.

The tenants and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the “Rules”); however, I consider and refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

I informed the parties that I would deal with both of the tenants’ applications in this hearing.

The participants were also informed that the primary issue in the tenants’ first application was their request to cancel the landlord’s Notice.

As I have determined that the portion of the tenants’ first application dealing with a request for orders for the landlord is unrelated to the primary issue of disputing the Notice, pursuant to section 2.3 of the Rules, I have severed that portion. A decision on that portion will be made within this Decision.

As another preliminary matter, the attending landlord requested that the landlord’s name be amended to reflect the name of the corporate landlord listed on the written tenancy agreement, not his name. After reviewing the written tenancy agreement, I find it appropriate to amend the tenants’ applications to change the name of the landlord to the corporate name in the tenancy agreement, a part of which bears the surname of this landlord.

As a result, I have amended the name of the landlord as listed in the style of cause page. The party appearing is now designated as landlord’s agent, although hereafter, he will still be referred to as “landlord”.

Issue(s) to be Decided

Application 1: Are the tenants entitled to an order cancelling the landlord’s Notice?

Application 2: Are the tenants entitled an order requiring the landlord to make emergency repairs?

Background and Evidence

The written tenancy agreement submitted into evidence shows that this tenancy began on July 1, 2017, monthly rent began at \$1,050.00, and the tenants paid a security deposit of \$525.00. The written tenancy agreement also shows that the tenants are required to pay 50% of the utilities of the residential property to the landlord.

The tenants' submitted without dispute that the current monthly rent is \$1,119.00.

The landlord proceeded first in the hearing to explain and support his Notice.

The landlord submitted that the Notice, dated July 16, 2019, was served on the tenants on July 16, 2019, by attaching it to the tenants' door, listing unpaid utilities of \$663.05 owed as of May 7, 2019. The effective move-out date listed was July 26, 2019. The tenants submitted the Notice into evidence and I note that it is on the standard RTB form.

The landlord asserted that since the issuance of the Notice, he has received payments on the utilities of \$50.00 on June 14 and \$100.00 on June 27, 2019, from the tenants.

The landlord submitted that as of May 7, 2019, the day they mailed the tenants a written demand for the utilities along with the copies of the utility statements, the tenants actually owed the amount of \$813.05. The landlord submitted a copy of the written demand, along with an accounting statement.

Tenants' response-

Tenant AS confirmed receiving the Notice on July 16, 2019.

The tenants submitted that they received the written demand, but asserted that it was not a valid demand as they had not been provided the copy of the utilities' statements prior to the written demand.

The tenants further said that there were reasons they did not pay the full utility bills, which included issues with the state of the rental unit. Due to the landlord's lack of repairs, they were forced to pay higher hydro bills than they should.

Analysis

Pursuant to section 46(6) of the Act, if a tenancy agreement requires a tenant to pay utility charges to the landlord and those charges are unpaid more than 30 days after the tenant receives a written demand for payment, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Upon receipt of the Notice, the tenant must pay the outstanding utilities listed or file an application in dispute of the Notice within five (5) days.

The Notice provided information to the tenants, which explained that the tenants had 5 days to file an application for dispute resolution at the Residential Tenancy Branch ("RTB") or Service BC in dispute of the Notice. It also explains that if the tenant did not file an application to dispute the Notice within 5 days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

In this case, the tenants confirmed they received the Notice on July 16, 2019, and were required to file their application within 5 days, or July 22, 2019, in this case, as it was the next business day after 5 days; instead, the tenants submitted their application on July 23, 2019.

Due to the above, I find the tenants failed to submit their application within 5 days and are conclusively presumed to have accepted the end of the tenancy.

I therefore dismiss the tenants' application seeking cancellation of the Notice.

I find it important to note that had I not dismissed the tenants' application as it was not filed within the required timeline, I would still uphold the landlord's Notice, as the tenants confirmed receiving the written demand for payment of utilities by way of the May 7, 2019, letter and that they did not pay those outstanding utilities.

As such, I find that the landlord is entitled to and I therefore grant them an order of possession of the rental unit effective 2 days after service upon the tenants, pursuant to section 55(1)(b) of the Act.

As I have dismissed the tenants' application seeking cancellation of the Notice and issued the landlord an order of possession, I likewise dismiss the remaining portion of the tenants' 1st application seeking an order requiring the landlord to make repairs to the rental unit, for an order suspending or setting conditions on the landlord's right to enter

the rental unit, and for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement.

As to the tenants' 2nd application for an order requiring the landlord to make emergency repairs to the rental unit, as I have issued the landlord an order of possession of the rental unit and the tenancy is ending, I likewise dismiss their application for emergency repairs to the rental unit.

Conclusion

The tenants' application is dismissed, without leave to reapply, for the reasons given.

The landlord has been issued an order of possession for the rental unit, effective 2 days after it has been served on the tenants.

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: September 26, 2019

Residential Tenancy Branch