



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DELANEY PROPERTIES LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPUM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid utilities and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 29, 2019, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed to have been served with the Direct Request Proceeding documents on September 3, 2019, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid utilities pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid utilities pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on February 22, 2018, indicating a monthly rent of \$1,500.00, due on the first day of each month for a tenancy commencing on March 1, 2018;
- A copy of five utility bills from the City of Vernon for the rental unit dated April 12, 2018 for \$398.70, July 17, 2018 for \$621.25, October 15, 2018 for \$862.68, January 21, 2019 for \$230.96, and April 11, 2019 for \$450.19;
- A copy of a demand letter from the landlord to the tenant, dated June 27, 2019, requesting payment of utilities in the amount of \$818.71;
- A copy of a Proof of Service Written Demand to Pay Utilities form which indicates that the demand letter was sent to the tenant by registered mail at 3:45 (a.m. or p.m. not indicated) on July 2, 2019;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the demand letter was sent to the tenant on July 2, 2019;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated August 7, 2019, for \$818.71 in unpaid utilities. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of August 23, 2019;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail at 10:43 (a.m. or p.m. not indicated) on August 7, 2019;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the 10 Day Notice was sent to the tenant on August 7, 2019; and

- A Direct Request Worksheet showing the utilities owing and paid during the relevant portion of this tenancy.

Analysis

Section 46(6) of the Act allows a landlord to treat unpaid utilities as unpaid rent, and issue a 10 Day Notice, 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,

I find that the tenancy agreement states that the “tenant agrees to pay the quarterly City of Vernon Utility Bill”, but does not specify if the tenant is required to put the utilities in their own name or if the tenant is required to pay the utilities to the landlord.

As the tenancy agreement does not clearly require the tenant to pay utilities to the landlord in accordance with section 46(6) of the Act, I find the landlord is not entitled to treat the unpaid utilities as unpaid rent and issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Therefore, I dismiss the landlord’s application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice dated August 7, 2019, without leave to reapply.

The 10 Day Notice dated August 7, 2019, is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice the landlord’s application for a Monetary Order for unpaid utilities is dismissed, with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice dated August 7, 2019, is dismissed, without leave to reapply.

The 10 Day Notice dated August 7, 2019, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlord's application for a Monetary Order for unpaid utilities, with leave to reapply.

I dismiss the landlord's application to recover the filing fee paid for this application without leave to reapply.

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 03, 2019

Residential Tenancy Branch