



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was convened in response to the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The tenant requested:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Background and Evidence

The tenant gave the following testimony. The tenant testified that the tenancy began in July 2019 with the current monthly rent of \$2700.00 due on the first of each month. The tenant testified that she doesn't know why the landlord is seeking money for utilities as it was never discussed. The tenant testified that the water bill was always included in the rent. The tenant testified that all rent is paid in full and that no discussions occurred to resolve this issue. The tenant testified that the landlord should meet their obligations and maintain the property.

The landlord testified that he doesn't want to end the tenancy but the tenant refuses to pay the utilities. The landlord testified that if the tenant pays the utilities she can continue to reside in the unit. The landlord testified that the cost of water has always been the tenants responsibility and that the tenancy agreement clearly shows that water is not included. The landlord issued a demand letter for payment of the utilities on October 29, 2020. The landlord testified that the tenant did not pay the water bill of \$1357.25. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 19, 2020 based on unpaid utilities.

Analysis

Section 46 of the Act addresses the issue before me 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.

The landlord gave a written demand for unpaid utilities on October 29, 2020 and then gave the 10 Day Notice to End Tenancy on November 21, 2020. The landlord was premature in issuing the notice as the tenant was not given 30 days to pay after they were issued the demand letter, they were only given 23 days. Based on the above, I hereby cancel this notice as it was given prematurely. The tenant is entitled to the recovery of the \$100.00 filing fee for this application. They are entitled to a one time rent reduction of \$100.00 for the rent due on March 1, 2021 in full satisfaction of that claim.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 19, 2020 is cancelled, it is of no effect or force. The tenancy continues.

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: February 18, 2021

Residential Tenancy Branch