



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 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 from the landlord, pursuant to section 72 of the *Act*.

SM ("landlord") appeared as agent for the landlord in this hearing. SR appeared for the tenants. Both parties 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. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and amendment. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served copies of the tenants' application and amendment. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

The tenants confirmed receipt of the 10 Notices to End Tenancy for Cause (the 10 Day Notice) dated February 10, 2021 and April 12, 2021, which were posted on the tenants' door. In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notices deemed served to the tenants 3 days after posting.

Issues to be Decided

Should the landlord's 10 Day Notices be cancelled?

If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on February 1, 2015, with monthly rent set at \$1,359.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$600.00, which the landlord still holds.

The tenants reside in the upper portion of the home. Both parties confirmed that utilities are not included in the monthly rent. The tenant applicants were previously responsible for collecting and paying the utilities for the two rented suites in the home, and had the utilities in their name prior to July 3, 2019. The tenants made payments in equal instalments to the utility provider.

The landlord confirmed that the utilities were transferred into the landlord's name after July 3, 2019 as new tenants have moved into the lower suite. The landlord testified that payments were now required on a usage basis instead of equal instalments in order to protect the landlord. The tenant testified that they did not agree to this change, and that the landlord had unilaterally made this change. The tenants are seeking cancellation of the 10 Day Notices as there is currently a dispute between both parties as to how utility payments should be made.

The landlord served the tenants with a 10 Day Notice on February 10, 2021 and on April 12, 2021 for the tenants' failure to pay the outstanding utilities. The landlord testified in the hearing that the tenants were provided copies of the bills as well as their proportioned break down of utilities owed. The landlord is seeking an Order of Possession for the tenants' failure to pay their share of the utilities.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 46 of the *Act* allows a landlord to treat the unpaid utility charges as unpaid rent and may give notice under this section 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 have reviewed the testimony and evidence before me, and in this case although I find it undisputed that the tenants are responsible for paying the utility charges to the landlord, a change was made in July of 2019 to how the utilities payments were made. I find that it is undisputed by both parties that prior to this date, the tenants were responsible for the billing in their own name for both upper and lower suites, and the tenants made payments in equal instalments as allowed by the utility provider. It is further undisputed that the billing for utilities is now in the landlord's name, and landlord and the tenants are now responsible for paying their portion to the landlord.

Section 1 of the **Residential Policy Guidelines** states the following about shared utilities:

SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.

Section 3 of the Residential Tenancy Regulation gives the following definition of "unconscionable":

3 For the purposes of section 6 (3) (b) of the Act [*unenforceable term*], a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

I find that the landlord had provided a remedy to the tenants to deal with the issue of shared utilities, but as a result of this remedy there is now an ongoing dispute as to how payments should be made. The tenants submit that they have always made equal instalments, and that the arrangement was unilaterally changed by the landlord. The landlord feels that switch of equal instalments to regular payments as per usage is justified and necessary in order to protect the landlord.

Section 14 of the Act states the following about changes to a tenancy agreement:

Changes to tenancy agreement

14 (1)A tenancy agreement may not be amended to change or remove a standard term.

(2)A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3)The requirement for agreement under subsection (2) does not apply to any of the following:

(a)a rent increase in accordance with Part 3 of this Act;

(b)a withdrawal of, or a restriction on, a service or facility in accordance with section 27 *[terminating or restricting services or facilities]*;

(c)a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

I am not satisfied that there is a mutual agreement to change the instalment plan for payment of utilities. Although the landlord had agreed to change the billing to under their name, I do not find that the tenants had agreed to change the way payments were made. In light of the fact that there is an ongoing and unresolved dispute as to how utility payments should be made, I do not find that the 10 Day Notices dated February 10, 2021 and April 12, 2021 to be valid. Accordingly, I allow the tenants' application to cancel these two notices, and the tenancy is to continue until ended in accordance with the *Act*.

I allow the tenants' supplication to recover the filing fee for this application. The tenants may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

Conclusion

The tenants' application to cancel the 10 Day Notices is allowed. The 10 Day Notices, dated February 10, 2021 and April 12, 2021 are of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenants to recover the filing fee for this application. I issue a monetary award in the tenants' favour in the amount of \$100.00. I allow the tenants to implement this monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 25, 2021

Residential Tenancy Branch