



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PERFORMANCE POWER PLAY
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FFT

This hearing dealt with the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated November 2, 2021 (10 Day Notice) and to recover the cost of the filing fee.

Tenants MH and SF-B (tenants) and landlord agent, JW (agent) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided to both parties. The parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The only documentary evidence that was excluded was a screenshot, which the tenants confirmed was not served on the landlord and to which the landlord confirmed they did not receive from the tenants.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Should the 10 Day Notice be cancelled?
- If yes, are the tenants entitled to the recovery of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. Monthly rent is \$2,800.00 per month and is due on the first day of each month. According to the signed tenancy agreement the monthly rent does not include water, hot water, heat, electricity, natural gas or propane gas, sewage disposal, dishwasher, cablevision, internet, and other items listed on the tenancy agreement.

A copy of the 10 Day Notice was submitted in evidence. The 10 Day Notice was dated November 2, 2021, which the tenants write in their application that they received November 3, 2021. The effective vacancy date listed on the 10 Day Notice was November 16, 2021. The amount listed as owing for unpaid utilities on the 10 Day Notice was \$1,471.48 and the landlord listed a demand for payment dated October 23, 2021 as follows:

I am ending your tenancy because:		
<input type="checkbox"/>	You have failed to pay rent in the amount of \$ _____	due on: (DD/MM/YYYY) _____
<input checked="" type="checkbox"/>	You have failed to pay utilities in the amount of \$ <u>1471.48</u>	following written demand on: (DD/MM/YYYY) <u>23-Oct-2021</u>

The tenants filed their application to dispute the 10 Day Notice on November 6, 2021. Neither party submitted a demand for payment document dated October 23, 2021. The landlord only submitted a copy of the utility bill which indicates that \$1,471.48 was owing.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice issued by landlord – Section 46 of the Act allows the tenants 5 days to dispute the 10 Day Notice, which I find the tenants did by filing their application on November 6, 2021. Once the 10 Day Notice is disputed, when the 10 Day Notice relates to unpaid utilities, which in this matter it does, the landlord has the onus to prove that a demand for payment letter was served on the tenant. Once that has been established, then the onus reverts to the tenants to prove that the demand for payment was paid.

In the matter before me, I find the utilities were due as the tenancy agreement did not include the water bill in the monthly rent however, I find landlord failed to submit a copy of the demand for payment. Instead, the landlord only submitted a copy of the water bill, which is not sufficient evidence of a demand for payment. Given the above, I find the landlord has provided insufficient evidence that a written demand for payment of utilities was made. Section 46(6) of the Act applies and states:

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.

[emphasis added]

Consequently, I **cancel** the 10 Day Notice due to insufficient evidence of a written demand for payment of utilities by the landlord. While the landlord may issue a new 10 Day Notice after serving a written demand, the landlord must wait at least 30 days for payment of those utilities before issuing another 10 Day Notice.

As the tenants' application was successful, I grant the tenants the recovery of the \$100.00 filing fee pursuant to sections 62(3) and 72 of the Act. I **authorize** the tenants a one-time rent reduction in the amount of **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The 10 Day Notice dated November 2, 2021 issued by the landlord is of no force or effect and has been cancelled.

The tenant has been granted a one-time rent reduction of \$100.00 for the filing fee.

This decision will be emailed to both parties.

The tenancy shall continue until ended in accordance with the Act.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 19, 2022

Residential Tenancy Branch