



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package by registered mail. The landlord stated that the tenant did not send two attachments and when the landlord inquired, the tenant sent him a screen shot which was "just a sentence". The tenant confirmed that the attachments in question consisted of "a sentence". The landlord was satisfied. The landlord testified, and the tenant confirmed, that the landlord served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the *Act*.

The parties were advised that pursuant to rule 6.11 of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules") persons are prohibited from recording dispute resolution hearings, except as allowed by rule 6.12. As neither party had requested nor been granted authorization to hire an accredited Court reporter as allowable under rule 6.12, I confirmed with the parties that they were not recording the hearing. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

At the outset of the hearing, I advised the parties that pursuant to rule 7.4, I would only consider the written or documentary evidence to which they pointed or directed me to in the hearing.

I note that s. 55 of the *Act* requires that when a tenant applies for Dispute Resolution seeking to cancel a notice to end tenancy issued by the landlord, I must consider if the landlord is entitled to an Order of Possession.

Section 55(1.1) allows me to consider a Monetary Order only if a tenant applies for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy and the application is dismissed.

Both s. 55 and 55(1.1) requires the landlord issue a notice to end tenancy that complies with section 52 of the *Act*.

Issues to be Decided

Are the tenants entitled to:

- 1) an order cancelling the Notice;
- 2) recover the filing fee?

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for unpaid utilities;
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The parties entered into a written fixed term tenancy agreement on March 1, 2020, for a single-family dwelling. Monthly rent is \$5000.00, payable on the first day of each month. The tenant paid the landlord a security deposit of \$2500.00. The landlord still retains this deposit, in trust.

The tenant (RZ) testified that in January 2020, he responded to an advertisement to take over an existing lease. RZ spoke to JC, the then tenant of record, who told RZ that the landlord agreed to not charge her a penalty if this she could find someone to take over her fixed term lease. JC explained that she shared the rental unit with another family and the rent was split \$2700.00/\$2300.00. The landlord was okay with sub tenanting. If, however, she could not find a new tenant then the sub tenants would have to also move. JC told RZ that the landlord confirmed that rent would remain \$5000.00 per month and the same terms would apply for the new tenant. The only additional costs to the \$5000.00 monthly rent were for electricity and internet.

RZ went to the rental unit and spoke with the family, who advised RZ they wanted to continue on as sub tenants. RZ then met with the landlord who confirmed that rent continued at \$5000.00 per month. RZ was responsible for hydro and internet. The landlord insisted on a new tenancy agreement and arranged a date for RZ to go to the Property Management Company office to sign the tenancy agreement. RZ is the only tenant listed on the tenancy agreement.

RZ went to the office, read, and signed the agreement. At the end of February 2020, the agent for the landlord accompanied RZ on a move-in inspection and RZ took possession of the rental unit around the end of February 2020.

RZ said he paid the rent on time and was shocked when on August 4, the landlord texted him advising that he owed \$5861.41 in outstanding utility fees. RZ stated the utility bills related to

“garbage, sewage, water, drainage, public space refuse, recycling curbside pick-up” etc. are not his responsibility.

The previous tenant, JC, was called as a witness. She testified that she and her family had to move out prior to the end of the fixed term tenancy agreement. She confirmed the landlord stated she would face no penalty if she could find a new tenant. It was JC’s understanding that the terms of the rental agreement remained the same and the new tenant would simply take over the remaining lease. She testified the landlord confirmed that rent would remain the same and the sub tenants could stay on. She is adamant that under her tenancy agreement, she was not responsible for utilities payable to the municipality. She stated that although the landlord said that she would not face a penalty for moving early, he deducted \$1500.00 from her security deposit.

The landlord confirmed that the previous tenant JC wanted to move out before the fixed term tenancy ended and he agreed she “could move without penalty as per the *Act* if she could find a new tenant”. He further explained that he told JC that the only cost to her would be any additional charges he incurred as a result of her leaving early – hence the \$1500.00 deduction for the move out/move in inspection and the new tenancy agreement drawn up by the property management company.

The landlord stated that there was a lot of negotiations between RZ and JC that he was not privy to. He does not know what they agreed to or what she told RZ – he was not there.

The landlord testified that he required a new lease because the old lease was under JC’s name. A new lease in the name of the residing tenant protected JC if the new tenant failed to make rent payments or damaged the property. If RZ “took over the lease” JC remained responsible. Also, the landlord wanted to have a longer lease so that tenants were guaranteed to stay a longer time.

The landlord confirmed he refused RZ’s request to see the tenancy agreement signed by JC because of privacy issues. He was not about to share another tenant’s private information with a new tenant neither would he share RZ’s information with anyone. The landlord pointed out each tenancy agreement was between the parties and any previous tenancy agreements were irrelevant.

The landlord entered into evidence the signed tenancy agreement referring specifically to Part 3, “Rent” in the “Residential Tenancy Agreement”, which identifies what is and is not included in the rent.

Included: free laundry, refrigerator, dishwasher, stove and oven, window coverings, carpets, parking for 2 vehicles.

Not included: water, natural gas, garbage collection, cablevision, sewage disposal, recycling services, electricity, snow removal, kitchen scrap collection, internet, storage, laundry (coin op), heat and recreation facilities.

Clause 21 “Utilities Payments” found in the Addendum expands on Part 3 of the Tenancy Agreement specifically identifying utilities not included.

Clause 21, “Utilities Payments” reads: “utilities are not included in the rent.” Subsumed under utilities is “the quarterly bill for the water, sewer, waste titled “Metered Utility Statement”. The clause goes on to state these charges are “fully the responsibility of the Tenants to obtain, and pay for according to the Tenant’s usage, immediately after the receipt of such bills the Tenant must make this payment to the City and provide proof the Tenant pay %100 of utilities.”

The landlord also entered email correspondence from the property management company confirming that RZ had the opportunity to review and read all of the documents. He signed and/or initialed all the documents “without any objection”.

The landlord testified that he was shocked and dismayed when strata told him that the utility bills owed to the municipality were unpaid for most of 2020 and half of 2021. The landlord paid the outstanding bill to preserve his credit rating and sent a “demand letter” to RZ requesting payment. When the tenant refused to pay the outstanding utilities charges, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Analysis

Based on the documentary evidence and the testimony before me for consideration, I am satisfied the Residential Tenancy Act applies to this tenancy. Rent in the amount of \$5000.00 is due on the first day of each month. The landlord holds the tenant’s \$2500.00 security deposit in trust. Pursuant to section 90 of the *Act*, I also find that the tenant was deemed served with the 10 Day Notice on September 11, 2021, five days after it was sent by registered mail.

Section 46(4) of the *Act* states that if a tenant who has received a 10 Day Notice does not either pay the overdue rent or make an application for dispute resolution within 5 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Records at the Residential Tenancy Branch show that the Application seeking cancellation of the 10 Day Notice was filed and the fee paid on September 12, 2021, less than 5 days after the deemed service. The tenant’s application was filed in time.

I now turn my mind to the form and content of the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities, issued September 06, 2021. To be of force and effect, the 10-Day Notice must meet the formal requirements of s. 52 of the *Act*.

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- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving notice
 - (b) give the address of the rental unit,
 - (c) **state the effective date of the notice,**
 - (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.
- [emphasis added]

I reviewed the RTB-30 – the 10-Day Notice- and note the landlord failed to provide the effective date of the notice. This information cannot be amended and invalidates the notice. This means the 10-Day Notice is of no force and effect because it does not comply with s. 52 of the *Act*. The landlord is free to issue a new 10-Day Notice that complies with s. 52.

The tenant's application to cancel the 10 Day Notice is granted.

As the tenant was successful in his application, I authorize him to deduct \$100.00 from the next rent payment to recover the filing fee cost, pursuant to section 72 of the *Act*.

I make no findings on the merits of the claim.

Conclusion

I grant the tenant's application to cancel the 10- Day Notice to End Tenancy for Unpaid Rent or Utilities.

As the tenant was successful in his application, I authorize him to deduct \$100.00 from the next rent payment to recover the filing fee cost, pursuant to section 72 of the *Act*.

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 2, 2022

Residential Tenancy Branch