



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The Tenant applied for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 9, 2021 (the 10 Day Notice); and
- the filing fee.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified he served the Notice of Dispute Resolution Proceeding (NDRP) on the Landlord by registered mail on November 18, 2021; the Landlord confirmed she received it on an unknown date. I find the Tenant served the Landlord in accordance with section 89 of the Act, and deem the NDRP received by the Landlord on November 23, 2021, in accordance with section 90 of the Act.

The Landlord testified she served her responsive evidence on the Tenant by posting it to the door on February 4, 2022; the Tenant confirmed he received it on an unknown date. I find the Landlord served the Tenant in accordance with section 88 of the Act, and deem the evidence received by the Tenant on February 7, 2022, in accordance with section 90 of the Act.

Issues to be Decided

- 1) Is the Tenant entitled to an order cancelling the 10 Day Notice?
- 2) If not, is the Landlord entitled to an order of possession and a monetary order for unpaid rent?
- 3) Is the Tenant entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on October 1, 2018; rent is \$832.30, due on the first of the month; and the Tenant paid a security deposit of \$400.00 and a pet deposit of \$300.00, which the Landlord still holds.

During the hearing, the Landlord referred to evidence that was not submitted to the Residential Tenancy Branch (RTB). The Landlord stated that she had difficulty uploading evidence, had faxed evidence to the RTB, and that the RTB had received her fax. I advised the Tenant on three occasions what evidence I had from her before me.

A copy of the 10 Day Notice is submitted as evidence. The Landlord testified she served the 10 Day Notice on the Tenant by posting it to the door on November 9, 2021; the Tenant confirmed receiving it on November 9, 2021.

The 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the Tenant failed to pay utilities in the amount of \$236.66, due October 7, 2021.

The Landlord testified that her utility bill includes garbage collection, and that when he moved in, the Tenant agreed to pay rent and utilities. The Landlord submitted as evidence an image of portions of overlapping documents referring to "garbage/recycling" levies and sewer levies from August 15, 2019; May 26, 2020; and June 3, 2021. The Landlord testified the charges were from the regional district.

The Landlord testified that the Tenant was not allowed to have cats, but got two, and that the Landlord told the Tenant she would not evict him for having cats if he paid for garbage collection.

The Landlord testified that the Tenant paid \$25.00 a month for garbage collection for July to September 2021. The Landlord submitted as evidence a handwritten invoice

dated June 30, 2021, with the Tenant's name and address, which includes a garbage collection charge of \$75.00 for July–September, and notes: "Pd CHQ."

The Landlord testified that when the Tenant was paying his October rent, the amount for garbage collection was listed on the invoice, but the Tenant said he would not pay for garbage collection.

The Landlord testified that she provided the Tenant with a written demand letter on October 7, 2021 for \$236.66 for garbage collection fees. The Landlord did not submit a copy of the letter as evidence.

The Tenant testified that when he moved in, rent was \$800.00 and electricity was the only utility he was supposed to pay. The Tenant testified that there was a garbage bin, a key was given to each tenant, and when the bin was full, it was up to the Landlord to empty it.

The Tenant testified that he had been provided with no written tenancy agreement, though he had requested one.

The Tenant testified that April 2021 was the first time the issue of paying for garbage collection came up. The Tenant testified that he had always dealt with the Landlord's husband, but that after the Landlord's husband had health problems, the Landlord took over, and told the Tenant he had to pay for garbage collection.

The Tenant testified that though it was not required of him, he offered to pay \$75.00 for garbage collection, and asked the Landlord to provide him with an email showing how much the garbage collection costs were per year.

The Tenant testified that the Landlord then wanted him to pay back fees for garbage collection in 2019.

The Landlord confirmed that the \$236.66 amount on the 10 Day Notice was to cover garbage collection fees for 2019, 2020, and 2021.

The Landlord testified that the agreement with the Tenant has always been that he pays "rent and utilities."

Analysis

Based on the testimony of the parties, I find that the Landlord served the Tenant the 10 Day Notice on November 9, 2021 by posting it to the door, and the Notice was received by the Tenant the same day. I find the Landlord served the Tenant in accordance with section 88 of the Act.

As the 10 Day Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form, I find that the Notice meets the form and content requirements of section 52.

Section 46 states that within five days after receiving a notice for non-payment of rent, the tenant may pay the overdue rent, or dispute the notice. The Tenant testified he received the 10 Day Notice on November 9, 2021, and he applied to dispute the Notice on November 12, 2021. I find the Tenant applied to dispute the 10 Day Notice within the deadline set by the Act.

Section 46 of the Act (*Landlord's notice: non-payment of rent*) states:

(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 [Residential Tenancy Policy Guidelines](#) are intended to help the parties to an application understand issues that are likely to be relevant, and to help arbitrators interpret the Act.

Policy Guideline 37. “Rent Increases” differentiates utility charges from garbage fees:

Operating expenses includes utility charges (heat, hydro, water), municipal taxes (property and school taxes), recycling, sewer and garbage fees, insurance premiums, ...

Therefore, I find that garbage collection is not a utility.

Section 14 (2) of the Act states that 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.

Based on the Policy Guideline's differentiation of utility charges from garbage fees, and the Tenant's affirmed testimony that he made a verbal agreement with the previous landlord for the Tenant to pay rent and electricity, I find that the Landlord has failed to prove the reason for the 10 Day Notice.

Therefore, the Notice is cancelled, and the tenancy will continue until it is ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant is successful in his application, I order the Landlord to pay the \$100.00 filing fee the Tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the Tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

The parties are advised that section 13 (1) of the Act requires a landlord to prepare in writing every tenancy agreement entered into on or after January 1, 2004.

Conclusion

The Tenant's application is granted.

The 10 Day Notice is cancelled; the tenancy will continue until it is ended in accordance with 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 24, 2022

Residential Tenancy Branch