



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 an application filed by the tenant pursuant the *Residential Tenancy Act* (the “*Act*”) for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings package and evidence; the tenant confirmed receipt of the landlord’s evidence. Neither party had issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

In the tenant’s application, the tenant named his family members, not signatories to the tenancy agreement, as tenants. I advised the tenant that these people are not tenants, as defined by the *Residential Tenancy Act*, but occupants. As such, these occupants have no right to commence a dispute under the *Act* and consequently I amended the tenant’s application removing his family members as applicants pursuant to section 64 of the *Act*.

Issue(s) to be Decided

Should the landlord's notice to end tenancy for unpaid utilities be upheld or cancelled?
Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The rental unit is one of five properties that share utilities equally. Each property is required to pay on fifth of the municipal utility charges as they become due. The landlord rented his unit out to the tenant and his family.

The tenancy began on March 1, 2020 with rent set at \$5,000.00 per month payable on the first day of the month. Rent is currently \$5,075.00 per month. The landlord points out that clause 3b) of the tenancy agreement states that water, garbage, sewer and recycling services are not included in the rent. There is an addendum to the tenancy agreement, and clause 21 of the addendum states:

21 UTILITIES PAYMENTS: *Utilities are not included in the rent. The Tenant(s) is (are) responsible to arrange immediately with the relevant supply companies for all accounts telephone, cable, and or internet/cable (where applicable), electricity, gas, alarm monitoring, at the Property to be addressed to the Tenant in the Tenant's name and the Tenant agrees to pay all charges for these utilities. In some municipalities (e.g. West Vancouver) the quarterly bill for the water, sewer, waste titled "Metered Utility Statement" is 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. If any unpaid bills are mailed or delivered to the Tenant, once received by the Tenant, these bills must be paid immediately. Nonpayment or late payment of these bills are considered nonpayment or late payment of rent. In case of false alarms if any fines are issued, the Tenant is responsible to pay these fines immediately.

The landlord had previously sent the tenant a written demand for payment and followed this up with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities which was disputed by the tenant. At a hearing before an arbitrator, that notice to end tenancy was cancelled because the landlord failed to provide an effective date for the tenancy to end. A copy of that decision was provided as evidence and the file number is recorded on the cover page of this decision.

The landlord then served the tenant with a further demand to the tenant to pay utilities dated February 16, 2022 which the tenant acknowledges receiving. Attached to the letter are the metered utility statements from the municipality spanning several billing periods from January 1, 2020 to December 31, 2021. These were provided as evidence by the landlord and the landlord went through how he arrived at a balance of \$6,264.85 as a balance owing as at December 31, 2021. An additional utility bill was received, and the landlord states the tenant now owes an additional \$801.51 for his share of the utility bill up to March 31, 2022.

The landlord testified that he kept funds in an account with the homeowner group to pay for emergencies and special levies. The landlord was unaware that the homeowner group had been deducting funds from his account to pay his fifth share of the municipal utilities. When the landlord was made aware that his account was overdrawn, he contacted the tenant to let the tenant know that it was the tenant's responsibility to pay the utilities.

The landlord testified that when the tenant signed the tenancy agreement at his property manager's office, the tenant had the opportunity to read over the contract before signing it. The tenant signed it, agreeing to pay the same amount of rent as his previous tenant, "J" who terminated her fixed term tenancy before the end of the fixed term. Rent was the same, but whether the new tenant had to pay utilities is determined by what is agreed to on the tenancy agreement.

The tenant gave the following testimony. He acknowledges receiving the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on March 22, 2022 when it was

delivered in person to him. I note the tenant filed an application to dispute the notice 3 days later, on March 25, 2022.

In January, 2020, the previous tenant “J” posted an ad looking for someone to take over the remainder of her fixed term tenancy and he responded. “J” discussed this with the landlord and the agreement was that if “J” could find a new tenant, the new tenant could have the same terms of tenancy at a rent of \$5,000.00 per month and that “J” could move out without paying a penalty for breaking the fixed term tenancy.

The tenant accepted the agreement, based on “J”’s reassurance that the tenant only needed to pay for electricity, gas, internet etc. “J” told the tenant that she never had to pay for garbage, sewer and water and that it would be the same for the tenant.

The tenant acknowledges he read over the tenancy agreement and addendum he signed at the property manager’s office on January 30th, 2020, however he is “not good at English”. He accepted “J”’s word that the rent would be the same, which he understood to include municipal utilities. The tenant testified that the landlord also told him everything would be the same, but he does not have that in writing.

The tenant submits that he was led to believe that he wasn’t required to pay for water, sewer and garbage services, so he shouldn’t be charged for it now. The tenant points out that he was a tenant for over a year before the landlord even notified him of those charges. The tenant has refused rent increases the landlord has tried to impose, so this is the landlord’s way of getting more money out of him.

The landlord responded to this, saying that he was unaware the homeowner group was deducting funds from his account to pay the landlord’s fifth share of utility payments. When he found out, he notified the tenant right away, in August of 2021.

Analysis

The tenant was served with the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on March 22nd and filed an application to dispute the notice three days later, on March 25th in accordance with section 46 of the *Act*.

When a tenant disputes a landlord’s notice to end tenancy, the onus is on the landlord to prove the reasons for ending the tenancy are valid, pursuant to rule 6.6 of the Residential Tenancy Branch Rules of Procedure. In this case, the landlord must satisfy me the tenant was obligated to pay for the municipal utilities within 30 days after being served with a written demand to pay them.

First, I must determine whether the tenant is obligated to pay these utilities. The tenant argues that the previous tenant, “J” and the landlord both told him that the terms of the rental would be the same as “J”’s whereas the landlord argues that the tenant is obligated to honour the terms of the tenancy agreement and addendum he signed.

The ***parol evidence rule*** is a principle that preserves the integrity of written documents or agreements by prohibiting the parties from attempting to alter the meaning of the written document through evidence of the subjective intentions of the parties (such as discussions and communications that are not referenced in the document). In other words, there is a strong presumption in favour of the written document.

Despite what the tenant understood to be the nature of the contract he signed (the tenancy agreement), clause 3b) of the tenancy agreement clearly establishes that things like water, sewage disposal and garbage collection are not included in the rent. This is further clarified in the addendum signed with the tenant, at clause 21. The first line indicates “*utilities are not included in the rent*”. This clause further goes on to say,

"Metered Utility Statement" is 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. If any unpaid bills are mailed or delivered to the Tenant, once received by the Tenant, these bills must be paid immediately.

I find this clause, agreed to and signed by the tenant, is clear and unambiguous. Consequently, I find the tenant was contractually obligated to pay for the utilities in accordance with the tenancy agreement.

I have reviewed the written demand for payment of utilities served by the landlord upon the tenant on February 16, 2022. I find the tenant is obligated to pay one fifth of the total metered utility statements assessed by the municipality from the beginning of March 2020 (which the landlord has already pro-rated to exclude January and February 2020), through to the end of December. The tenant’s one fifth portion of the utility is \$6,264.85, as assessed by the landlord.

I find the tenant failed to pay utilities in the amount of \$6,264.85 following written demand served upon him on February 16, 2021. As such, I uphold the landlord’s notice to end tenancy for unpaid rent or utilities dated March 22, 2022.

Section 55(1) and (1.1) state:

(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit (a) if the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Section 46(6) states:

If a tenancy agreement requires the tenant to pay utility charges to the landlord, and 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...

I find the landlord's notice to end tenancy complies with the form and content provisions set out in section 52 of the *Act*. As such the landlord is entitled to an Order of Possession. The effective date stated in the landlord's notice to end tenancy has passed and the landlord is consequently entitled to an Order of Possession effective two days after service upon the tenant.

Pursuant to section 46(6), I determine that the unpaid utilities are unpaid rent and in accordance with section 55(1.1), I order that the tenant pay the landlord unpaid rent in the amount of \$6,264.85. The landlord has provided evidence indicating the tenant owes an additional amount of \$801.51, representing unpaid utilities up until March 31, 2022. I determine that the tenant could reasonably anticipate the landlord would seek this additional amount and in accordance with rule 4.2, the landlord's monetary order is increased to account for the unpaid utilities which I also treat as unpaid rent. The landlord is entitled to a monetary order in the amount of \$7,066.36.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant.**

I award the landlord a monetary order in the amount of **\$7,066.36.**

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: June 10, 2022

Residential Tenancy Branch