



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, OLC**

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
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62.

The landlord and the tenant both attended the hearing. The tenant was assisted by an advocate, YB. 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 the tenant acknowledged service of the landlord’s evidence. Neither party took issue with timely service of documents.

Preliminary Issue

The tenant provided copies of two notices to end tenancy issued by the landlord issued on June 3rd and June 14th respectively. The landlord testified that he misunderstood the timing of the notices and that he is only seeking to end the tenancy on the notice to end tenancy dated June 14th. Consequently, I order that the notice to end tenancy issued on June 3, 2022 is of no force or effect and I cancel it.

Issue(s) to be Decided

Should the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent/Utilities be upheld or cancelled?

Should the landlord be required to comply with the Act, regulations or tenancy agreement?

Background and Evidence

The landlord gave the following testimony. He purchased the rental unit from the previous landlord on December 22, 2021. A copy of the tenancy agreement signed by the tenant and the previous landlord was provided as evidence. Rent was set at \$1,000.00 per month with an additional fee of \$160.00 per month for utilities. The landlord testified that the address of the rental unit is suite #2 in a two unit building.

On May 9, 2022, the landlord attended the tenant's rental unit and explained to her that she was using more than \$160.00 per month in utilities. The tenant asked for proof and the landlord emailed the tenant a breakdown of the utilities later that day. The total was \$605.69. The email states,

"As discussed with you in person on our visit to you yesterday. I have attached the invoices for the utilities unpaid during months Jan, feb and Mar 2022. While you had paid only \$160 dollars for the utilities per month, they came out to be higher. Kindly pay them at the earliest. I have adjusted the heater filter price in the invoice"

On June 14th, via the email address provided on the tenancy agreement, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities stating the tenant failed to pay utilities in the amount of \$577.44. When I asked the landlord why it wasn't \$605.69, the landlord responded saying that he miscalculated the utilities to include extra days in his email to the tenant dated May 9th. I note that the address of the rental unit on the notice to end tenancy states Unit #1, not Unit #2.

The landlord testified that the average utilities used by the tenant is approximately \$315.55 per month, while the tenancy agreement only requires the tenant to pay \$160.00 per month. He testified that the tenant is not using utilities wisely and that he is subsidizing her utility usage. The landlord acknowledges he does not have anything in writing from the tenant agreeing to paying more in utilities if she uses more.

The landlord acknowledges the tenant has been faithfully paying her \$1,000.00 rent together with utility payments of \$160.00 every month. Subsequent to serving the notice to end tenancy, the tenant has continued to pay \$1,160.00 per month however the landlord has not been issuing receipts. The electronic transfer acknowledgement serves this purpose.

The tenant's advocate gave the following submissions. The tenant does not have internet access and can only retrieve emails when she goes to the library to check her emails. The landlord did not have the tenant's permission to be served with documents related to her tenancy via email. Tenant's advocate points out that the email address on the tenancy agreement was provided in 2019, before the legislation allowing service

by email was enacted. The landlord did not have a signed form #RTB-51 allowing the landlord to serve the tenant via email. The advocate submits that the tenant didn't know about the notice to end tenancy until she checked her email on July 17th. The tenant filed her application to dispute the notice on July 20th, within 3 days.

The "unpaid utility" charge levied by the landlord is illegal, since it increases the tenant's rent and alters the tenancy agreement without the tenant's written agreement. This is a violation of section 14 of the Act.

Analysis

The ability to serve documents by email was approved and ordered by Order in Council no. 089, effective March 1, 2021. When the tenant entered into the tenancy agreement with her previous landlord in 2019 and supplied an email address, the provision to serve documents related to the tenancy did not exist. Consequently, the tenant could not reasonably expect the landlord to serve a notice to end tenancy by email. As of March 1, 2021, for email to be considered valid as a method of service the email address must be provided specifically for the purpose of serving documents. The legislation does not require usage of the form #RTB-51, however in this case, I find that when the tenant supplied an email address on the tenancy agreement, the tenant did not recognize it as a valid method of service.

The tenant acknowledges receiving the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on July 17th, 2022 when she checked her email at the library. Based on this testimony, I find the notice was served on July 17th pursuant to section 71 of the Act. The tenant filed an application to dispute this notice on July 20th, within 5 days of receiving it in accordance with section 46 of the Act.

Section 46(2) states that a notice must comply with section 52 [form and content of notice to end tenancy]. Section 52(b) requires that the notice give the address of the rental unit. The landlord testified that the tenant resides in unit #2, yet the notice dated June 14, 2022 states the tenant's address is unit #1. I find the notice does not comply with the form and content provisions of section 52. This is the first reason I do not uphold the landlord's notice to end tenancy.

The landlord seeks to end the tenancy because the tenant failed to pay \$577.44 in unpaid utilities. The tenancy agreement with the tenant clearly indicates the tenant pays \$160.00 per month in utilities. In this agreement, there is no provision for the amount to be paid in utilities rises as the cost of the utilities goes up. While I understand the landlord's reasoning for seeking more money from the tenant to cover

increased utilities, the tenancy agreement does not provide for that. As the tenant's advocate points out, section 14 of the Act prevents the landlord from amending the tenancy agreement without an agreement from the tenant. Pursuant to schedule 1(2) of the Residential Tenancy Regulations, such a proposal must be in the form of a written addendum to the tenancy agreement which the tenant has not signed. If not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable. I find the landlord's choice to charge the tenant increased utilities is contrary to section 14 of the Act and schedule 1(2) of the regulations. As such, it cannot be enforced. For this reason, I find the notice to end tenancy is invalid and I cancel it.

The tenant seeks an order to prevent the landlord from changing the terms of her tenancy agreement. I do not have the authority to prevent the landlord from seeking to change the terms of the tenancy agreement. There is no requirement for the tenant to sign any of these documents if she chooses not to. I caution both parties that if a new agreement or an addendum to the tenancy agreement is agreed to by both parties and if it is not unconscionable, that both parties must sign it in accordance with schedule 1(2) of the Regulations to be effective. This portion of the tenant's application is dismissed without leave to reapply.

Conclusion

The landlord's notice to end tenancy dated June 14, 2022 and the landlord's notice to end tenancy dated June 3, 2022 are both cancelled. This tenancy shall 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: December 12, 2022

Residential Tenancy Branch