



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

The Tenant applied for dispute resolution (“Application”) and seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”).

Parties appeared for both the Landlord and the Tenant. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant testified that they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlord on January 26, 2023 in-person via an agent. The Landlord confirmed they were served in-person with the Materials, though stated this was done on January 27 2023. The Tenant was provided with the Materials by the Residential Tenancy Branch on January 26, 2023 and they had until January 29, 2023 to serve them on the Landlord. Therefore I find that pursuant to section 89 of the Act that the Tenant’s Materials were sufficiently served to the Landlord.

The Landlord testified that they served the Tenant with their evidence in-person on February 28, 2023. The Tenant agreed with the Landlord’s testimony. Rule 3.15 of the *Rules of Procedure* states that “[...] the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.”

As the Respondent Landlord’s evidence was received by the Tenant less than seven days before the hearing, which was scheduled for March 3, 2023, I am excluding it from consideration.

Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, is the Landlord entitled to an Order of Possession?
- 3) Is the Landlord entitled to a Monetary Order for unpaid rent or utilities?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Tenant testified that the tenancy commenced on January 1, 2022 and that rent is \$550.00 per month due on the first day of the month. They testified that no security deposit or pet damage deposit was taken. The Landlord testified that a security deposit equal to half a month's rent should have been paid by the Tenant per their tenancy agreement, but they had not received this. The Landlord agreed with the remainder of the Tenant's testimony.

The Landlord testified that they asked the Tenant to pay 50% of the utilities as there is an 'A' and a 'B' suite within the rental property which are both 1,500 square feet. They said the Tenant would not pay the utilities without seeing a bill. They said the Tenant did not get along with the upstairs tenant who would not provide copies of the utility bills, which were in their name. The upstairs tenant vacated their unit on September 27, 2022 and the utilities were put back in the Landlord's name. The Landlord testified that since the bills have been in their name the Tenant had been given copies.

The Landlord's Agent testified they assumed their role of Agent on June 1, 2022. They noticed that the Tenant had only made one payment for utilities and as of September 2022 the Tenant was over \$2,000.00 in arrears for rent and utilities. The Landlord's Agent stated that at this point they wrote up a notice to end tenancy but opted to allow the Tenant to stay and pay back the arrears instead.

The Landlord's Agent testified that they sent a letter to the Tenant dated December 1, 2022 saying the Tenant should leave the rental unit on March 31, 2023. They confirmed they then served the Notice on the Tenant on January 16, 2023 by attaching it to the front door of the rental unit and included a letter providing figures relating to the arrears for utilities.

The Tenant testified they only received one copy of a utility bill from the Landlord throughout the tenancy.

The Tenant's Advocate confirmed that the only bills provided to them by the Landlord were from 2021 which pre-dates the tenancy. They stated that they received a letter from the Landlord stating the Tenant could pay one third of the utilities after the upstairs tenant moved out. They confirmed the Landlord had never provided clarity on the amount paid or owed by the Tenant for utilities.

Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. This requirement to pay rent includes a legal requirement to pay utilities, if required under a tenancy agreement.

Section 46(6) of the Act states that "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."

Based on the testimony from both parties, I find on the balance of probabilities that the Tenant was required to pay utility charges to the Landlord as these were not services or facilities included in the monthly rent.

However, there is a lack of clarity as to the precise portion of utilities the Tenant was required to pay throughout the tenancy, as there appears to have been agreements between parties to adjust this based on occupancy and vacancy of the upstairs suite. Therefore, I make no findings as to the percentage the Tenant is required to pay, or the total amount owed by the Tenant to the Landlord. It should be remembered that the onus is on the Landlord to prove these points. There is also a lack of clarity as to how much the Tenant owes in terms of utilities and how much has been paid by the Tenant.

As quoted above, the Act states at section 46(6) that a written demand for payment of the utility charges must be made and for 30 days to elapse before a landlord may treat unpaid utilities as rent.

Rule 6.6 in the *Rules of Procedure* states that "the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy".

Therefore, the onus is on the Landlord to prove, on the balance of probabilities that the Notice is valid.

The Tenant testified they received a copy of only one utility bill during the tenancy. A copy of a bill dated December 12, 2022 was entered into evidence by the Tenant, though no written demand accompanies the bill.

The Landlord's agent testified they did provide a letter regarding the utilities but did not mention any inclusion of copies of the utility bills in question. It should also be noted that this letter accompanied the Notice itself so could not be considered a valid written demand for payment as the effective date of the Notice would have expired before the 30 day period referenced in section 46(6) of the Act had elapsed, making any outstanding utility amount treated as unpaid rent.

The Act is clear that a written demand for payment of the utilities must first be issued to the Tenant and then a period of 30 days must elapse before a Notice to End Tenancy can be served to the Tenant. I find that the Landlord has not proven, on the balance of probabilities, that a valid written demand for any outstanding utilities was made at any stage in the tenancy. Therefore, the Notice is not valid and the Tenant's Application is granted.

Conclusion

The Tenant's Application is granted.

The Notice is of no force or effect and the tenancy continues.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 10, 2023

Residential Tenancy Branch