



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 canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing with their Advocate. The Landlord attended the hearing and called a Witness, K.O. 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.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the “Materials”) and evidence. Based on their testimonies I find that each party was served with these materials as required under sections 88 and 89 of the Act.

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?

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 parties agreed on the following regarding the tenancy:

- The tenancy started on April 15, 2022.
- Rent is \$2,000.00 per month, payable on the fifteen day of the month, though the parties had agreed to temporarily amend the payment schedule to bi-weekly around December 2022 to accommodate the Tenant's financial situation. The Landlord stated they rescinded this amendment when they issued the Notice.
- The Tenant did not pay a security deposit or pet damage deposit to the Landlord.
- The Tenant still occupies the rental unit.
- There is no written tenancy agreement.

The Landlord testified as follows. They agreed to rent to the Tenant on a short-term, month-to-month basis. The agreement was for the Tenant to be responsible for all utility bills, including hydro and internet. As the Tenant did not have enough funds to pay the deposit for hydro, the account was kept in the Landlord's name and the Tenant would pay the Landlord's daughter, K.O., the cost of the hydro bills.

The Tenant paid rent late in the months of July 2022, November 2022 and December 2022. The Landlord asked the Tenant to move out at this point. However, the tenancy continued. The Tenant was late paying rent for January 2023 and February 2023.

The Landlord found out that the Tenant had not been paying their daughter for the hydro bills. Rent due March 15, 2023 was late so the Landlord served the Notice. They also served a One Month Notice to End Tenancy as the Tenant had been smoking on the balcony which incurred strata fines, they had also incurred parking fines and had been running a business out of the rental unit.

A copy of the Notice was entered into evidence by the Tenant. It is signed March 16, 2023 and provides an outstanding amount of rent of \$2,000.00 which was due on March 15, 2023. There is also an amount of \$777.52 in respect of unpaid utilities following a written demand on March 5, 2023.

The rent was paid by the Tenant after the Notice was issued and there is no outstanding rent at present, though no payments have been made in respect of utilities.

The Tenant's Advocate stated that no breakdown of utility costs was ever provided to the Tenant.

The Tenant testified as follows. They were told hydro would stay in the Landlord's daughter's name and they denied not having enough funds to cover the deposit. They were told that as the Landlord was renting a parking space in the building and that would cover the hydro bills. Issues with rent were never mentioned until March 2, 2023, though they acknowledged rent was late a couple of times.

The Tenant referred me to records of payments to the Landlord on March 18, 2023 and March 19, 2023, both for \$1,000.00. These payments were discussed with both parties and it was agreed that these payments represented the outstanding rent referenced on the Notice.

The Landlord called their witness, K.O., who testified as follows. The Tenant had told them that due to previous issues with the hydro provider, it would be difficult to have the Tenant's name on the account. As a result, they kept the Landlord's name on the account and agreed the Tenant would pay them to cover the bills. They never mentioned the possibility of renting a parking space to cover the hydro bills to the Tenant. They did ask the Tenant for payment but didn't want to add to any personal issues by chasing for payment.

They referred me to their written statement which was submitted into evidence which stated that when the Tenant was asked for payments for the utilities, they provided only excuses. They did not want to inform the Landlord of the situation with utilities as they knew of the issues with rent and did not want to add to the list of problems.

Written demands for utilities were discussed. The Landlord testified that payments for hydro bills from November 2022 and January 2023 were made verbally to the Tenant by K.O. The demand for the hydro bill for March 2023 was made by email to the Tenant on March 16, 2023 and issued with the Notice as well, though the Tenant's Advocate stated it accompanied the One Month Notice.

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.

Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

Both the Landlord's evidence and the Tenant's own testimony show that the Tenant did not pay the rent on March 15, 2023. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent.

Section 46(4)(a) states that a tenant may pay the overdue rent within five days of receiving a Notice to End Tenancy for Unpaid Rent and, if this occurs, the notice has no effect. Both parties agreed that the Tenant paid the outstanding rent in full in two installments, the last one being on March 19, 2023. I find that this is within five days of the Tenant receiving the Notice and therefore would mean the Notice is of no effect, though there is still the question of outstanding utilities to be addressed.

Section 46(6) of the Act states that if a tenancy agreement requires the tenant to pay utilities to the landlord and if the utilities go unpaid for more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utilities as unpaid rent and may give the tenant a Notice to End Tenancy.

Based on the testimony from both parties, I find that the written demand for payment of the utilities referenced on the Notice was sent from the Landlord to the Tenant on March 16, 2023 via email. I also find that the Notice was issued on March 16, 2023 which is within 30 days after the written demand for utilities was made. I accept the Landlord's testimony that demands for payment of the utilities were made in November 2022 and January 2022, however these were confirmed by the Landlord to be verbal requests which do not meet the requirements set out in Section 46(6)(b) of the Act.

Section 46(6)(b) of the Act is clear in setting out the requirement for utilities to be unpaid for more than 30 days following a written demand for them before a Notice to End Tenancy can be issued. As the Landlord issued the Notice the same day as the written demand for utilities, a period of more than 30 days had not elapsed and therefore I find that the Notice does not comply with section 46(6)(b) of the Act. As a result, I find the Landlord may not end the tenancy due to the outstanding utilities stated on the Notice as sufficient time has not elapsed since the written demand for them to be considered outstanding rent.

Therefore, I grant the Tenant's Application and I order the Notice to End Tenancy for Unpaid Rent or Utilities dated March 16, 2023 is canceled and is of no force or effect and the tenancy continues.

Conclusion

The Tenant's Application is Granted. 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: May 01, 2023

Residential Tenancy Branch