



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC, DRI

Introduction

This hearing was set to deal with a tenant's application for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"); orders for compliance and dispute of a rent increase.

Both parties appeared at the hearing and were affirmed. The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The landlord acknowledged receiving the tenant's hearing materials. The tenant acknowledged receiving the landlord's evidence that included photographs, water bills, and a letter written by the landlord. During the hearing, I noted that I had a spreadsheet before me, that appeared to a listing of water bill charges, that was upload by the landlord. The tenant stated the evidence she received did not include a spreadsheet. The landlord stated he did not prepare the spreadsheet, that his son did, and his son uploaded the spreadsheet. The landlord did not state the spreadsheet was served to the tenant. Admissible evidence must be served to the other party so that the other party may review and prepare a response to the evidence. I was not satisfied this spreadsheet had been served to the tenant and I excluded it from further consideration.

Issue(s) to be Decided

1. Should the 10 Day Notice be upheld or cancelled?
2. What is the monthly rent?
3. Is water included in the monthly rent?
4. Does the tenant owe for past or future water bills?

Background and Evidence

The landlord testified that the tenancy started in 2017 although he was uncertain of the month in 2017. The tenant testified the tenancy started in July 2017.

Both parties were in agreement that a written tenancy agreement was not executed when the tenancy started. I also heard consistent testimony that the landlord did not collect a security deposit from the tenant but he did collect a \$250.00 pet damage deposit. No receipt was issued for the pet damage deposit paid in cash.

On February 5, 2023, the landlord issued a 10 Day Notice indicating the following reason for ending the tenancy:

I am ending your tenancy because:

☐ You have failed to pay rent in the amount of \$ _____ due on: (DD/MM/YYYY) 28/02/23

☒ You have failed to pay utilities in the amount of \$ 3430.00 following written demand on: (DD/MM/YYYY) 05/02/23

Consider this notice as proof of the time of service (not received by landlord's copy failure to

The tenant filed to dispute the 10 Day Notice within the time limit for doing so.

The parties were in dispute as to the amount of the monthly rent and whether the tenant is required to pay the landlord for water in addition to rent. Below, I have summarized the parties' respective positions.

The landlord testified the rent was set at \$900.00 per month from the start of the tenancy and that rent did not include water.

The tenant testified that the rent was set at \$800.00 per month at the start of the tenancy and there was no discussion as to whether she had to pay for water or whether water was included in rent. The tenant was paying \$800.00 per month until her daughter came to live with her in September 2018 and the landlord increased the rent to \$900.00 to offset the extra water consumption. When the tenant's daughter moved out in 2020 the rent went back down to \$800.00 for a couple of months but then the landlord demanded she pay more, \$900.00 per month, or she had to move out. The tenant began paying \$900.00 against in October 2020 and has continued to do so since then.

Both parties provided consistent testimony that the tenant pays rent in cash and the landlord did not issue any receipts to the tenant.

In 2019 the tenant signed a written tenancy agreement. The landlord pointed to the tenancy agreement as proof the rent is \$900.00 and rent does not include water. The tenant testified that she signed a blank tenancy agreement as the landlord and his wife were on their way to the bank and the landlord's wife presented her with the document to sign to prove to the bank that they were receiving rental income. The landlord acknowledged that he had the tenant sign the tenancy agreement in 2019 because he was in the process of re-mortgaging and needed to show his rental income to the bank but the landlord denied the tenancy agreement was blank when the tenant signed it. The tenant pointed to the signature page and noted that the date beside her signature is in the landlord's handwriting as evidence she signed a blank agreement.

Both parties provided consistent testimony that on a few occasions the landlord orally demanded the tenant to give him money for water bills. The landlord testified that on a few occasions the tenant gave him \$20.00. The tenant testified that on a couple of occasions she increased the monthly payment to \$1000.00 with the extra \$100.00 to be applied toward water bills after the landlord demanded she pay him or else she had to move out.

The parties provided consistent testimony that the landlord had never present the tenant with a written demand for payment of utility bills or copies of the water bills until earlier this year. The tenant was shocked to receive so many water bills and a demand for thousands of dollars in water bills. The landlord explained that he had placed money in a bank account and the city was taking automatic payments from the account for the water bills and he was not receiving the water bills. But then his bank account became overdrawn without the landlord noticing and when the city was unable to debit the landlord's bank account the city charged the outstanding water bills to the landlord's property tax account. When the property tax bill was received the landlord saw a higher than expected charge and that's when he started looking into the matter and realized the water bills had been charged to his property tax account and how large the water bills were.

The landlord was of the position that if the tenant was not required to pay for water the tenant would not have given him money toward the water bills. The tenant was of the position she did not owe for water but the landlord threatened to evict her if she did not so she made a couple of payments to him.

When the landlord delivered the water bills from the tenant, the landlord demanded the tenant pay him \$3430.00 for water bills incurred over the last five years. I asked the landlord if the landlord took into account the payments the tenant had given to him. The landlord indicated he believed so but could not locate his calculation. As for issuing a written demand for utilities, the landlord indicated he believed this was done because he did learn he had to do that when he called the Residential Tenancy Branch. Later, when the hearing was nearing an end, the landlord stated his wife served the written demand but that they did not have a copy or photograph of it. The tenant testified that the landlord may have given her a scratch piece of paper with some numbers on it.

The landlord stated the water bills should be sufficient to show how much the tenant owes for water. I noted that the water bills that were provided as evidence includes charges for the two meters on the property. The landlord explained there are two houses on the property and each house has its own water meter, denoted as meter A and meter B. The landlord testified that meter B is for the rental unit and the other rental house on the property has meter A. The landlord testified the other house on the property was also tenanted and that he always requires tenants to pay for their own metered utilities, including water.

The landlord was of the position the tenant is negligent in using too much water and creating larger than normal water bills. The tenant explained the taps are often leaking because the landlord replaces inserts in the taps but that the taps are old and the inserts only last a month or so before they start dripping again. The tenant repeatedly complains to the landlord about leaking taps but more recently the tenant took it upon herself to replace the taps to stop the dripping.

The landlord testified he has replaced the seals on the taps numerous times and pointed out that the tenant had vice grips on the taps when he attended the property so the landlord believes the tenant is causing the taps to drip. The tenant acknowledged she placed vice grips on the old taps but that was the only way to get the tap closed tight enough to ease the flow of water leaking from the taps. I asked the landlord when the last time he had replaced the taps but the landlord was unclear in his answer and argued that replacing the seals is sufficient.

During the hearing, I informed the parties that I would be cancelling the 10 Day Notice as it was defective. Also, it was clear there has been a lack of proper documentation prepared by the landlord, as required under the Act, including failure to prepare a written tenancy agreement when the tenancy started and to give the tenant rent receipts for payments in cash. I gave the parties the opportunity to make proposals to resolve

this matter. The tenant proposed that she continue to pay \$900.00 in rent every month, that she will not seek recovery of rent overpayments of \$100.00 per month, and that rent includes water. The landlord was not open to any resolution other than the tenant pay rent of \$900.00 per month, pay the past water bills and pay the future water bills.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

Under section 46(6) of the Act, a landlord may end a tenancy for unpaid utilities with a 10 Day Notice but the landlord must first serve the tenant with a written demand for payment of utilities and give the tenant 30 days to pay the utilities. Only after 30 days has passed and payment has not been made may the landlord issue a 10 Day Notice.

In this case, the 10 Day Notice indicates the landlord demanded the utilities in writing on February 5, 2023 but the landlord also issued the 10 Day Notice on February 5, 2023.

As for a written demand, I see the following document included in the tenant's evidence:

Billing Period
 Nov 1 2022 to Feb 5
 ↓
 130.
 Dec 2022 130.
 130. = 390.
 Jan 2023
 + 3220.00
 390
 3510.00
 - 80.
 3430.

The above document may be what the landlord considers a written demand; however, I find it does not contain sufficient details. From the parties' testimony and the water bills, the landlord is seeking several years of past water bills; however, the document above indicates no date range other than "Nov 1, 2022 to Feb 5". I interpret Feb 5 to mean February 5, 2023 which is much less than the several years the landlord is claiming. Also, the document does not indicate what utility is owed, what the amounts represent, where to make payment or a deadline for payment.

Considering the document has a date of February 5, which is consistent with the 10 Day Notice, I find it more than likely this document was given at the same time as the 10 Day Notice. Accordingly, I find the landlord did not give a written demand 30 days prior to issuance of the 10 Day Notice as required under section 46(6) of the Act and I cancel the 10 Day Notice.

Since the 10 Day Notice is cancelled, the tenancy continues at this time, and I proceed to consider the other remedies sought by the tenant.

I was provided opposing testimony as to the what the amount of the monthly rent set at the start of the tenancy. There was no written tenancy agreement prepared at that time, no rent receipts have been issued for the tenant's cash payments, and the landlord did

not provide any other evidence, such as bank deposits, to show how much the monthly rent was when the tenancy started in 2017.

The landlord relied upon a tenancy agreement that was signed in 2019 in support of his position that the rent was always \$900.00 per month; however, the tenant called into question the reliability of the written tenancy agreement in submitting the document was blank when she signed it and it was signed for mortgage re-financing purposes only at the request of the landlord. The landlord acknowledged he was re-mortgaging at the time and asked the tenant to sign the tenancy agreement for that purpose but the landlord states the tenancy agreement was filled in when the tenant signed it. Upon review of the tenancy agreement, it does appear to me that the date beside the tenant's signature is in the landlord's printing as it is consistent with the other writing on the tenancy agreement, as stated by the tenant.

In hearing from both parties, I found the tenant's memory and version of events to be more reliable. At the start of the hearing, the landlord stated he has been ill and his mind was not very clear. When I asked him about the dates of service of his evidence, he was not certain even though he served the tenant within the past month. The landlord claimed the tenant gave him \$20.00 for water a "few" times but did not offer any other specifics such as when or how many times exactly, yet the "written demand" of February 5, 2023 suggests the tenant may have given the landlord \$130.00 three times and \$80.00 some other time. The landlord was unclear as to when he gave the tenant a written demand for utilities. In contrast, I found the tenant provided clear dates as to when her daughter lived with her, when the landlord increased the rent and the reason for its increase, and the tenant's recollection of paying for water was closer to what is reflected on the "written demand" of February 5, 2023. Finally, the landlord argued that he never pays for utilities that are metered on his rental properties. Yet, I find that statement inconsistent with the landlord's statements that he was not reviewing the water bills since he had automatic payments set up and meter A was for another rental house. Clearly that house had metered water and was tenanted so it is puzzling how the landlord was able to collect water bills from those tenants if he was not looking at the water bills.

Having found the tenant's memory more reliable and considering the landlord's motivation for preparing a written tenancy agreement in 2019 was self-serving, so that he would get approved for re-financing, I am not persuaded that the signed tenancy agreement accurately reflected the actual agreement. Therefore, I do not rely upon the tenancy written agreement of 2019.

Given the landlord's failure to prepare documentation as required under the Act, including a written tenancy agreement when the tenancy started and receipts for cash payments, I find the most reliable evidence as to the parties' agreement is their conduct over the past years. I prefer the tenant's more reliable testimony that the rent was initially \$800.00 and went to \$900.00 per month with an explanation from the landlord that the extra amount was for water which implies water is included in the monthly rent payment. The tenant was agreeable to continuing on with that arrangement rather than setting the rent back to \$800.00 or recovering any amounts she did pay for water provided she not be liable to pay for any more past or future water bills. I find the tenant's proposal is consistent with the parties' long standing conduct. I further find the tenant's proposal more just as the water consumption is likely higher due, in part, the repeatedly leaking taps. Therefore, I order the following in resolution of this dispute:

1. The monthly rent is set at \$900.00 subject only to rent increases that are done in accordance with the Act.
2. To increase rent legally, the landlord must:
 - a. serve the tenant with a Notice of Rent Increase in the approved form no more than once per year,
 - b. give the Notice of Rent Increase at least three months in advance of the rent increase taking effect, and
 - c. the amount of the rent increase must not exceed the annual allowable amount or the amount agreed to by the tenant in writing, or as authorized by the Director of the Residential Tenancy Branch.
3. The monthly rent includes water.
4. The tenant shall not recover any amounts for overpaid rent or utilities.
5. The landlord shall not recover any amount for past or future water bills.
6. The landlord must not terminate the water supply to the rental unit.

Conclusion

The 10 Day Notice dated February 5, 2023 is cancelled and the tenancy continues at this time.

I have issued orders with respect to the amount of the monthly rent and utilities included in rent. I have also issued orders setting aside the tenant's request for recovery of overpaid rent or utilities and I order the landlord is not entitled to recover past or future water bills from the tenant.

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 07, 2023

Residential Tenancy Branch