



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, FFL
 CNR, DRI, OLC, FFT

Introduction

Under section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the landlord's May 7, 2023, application to the Residential Tenancy Branch for:

- (i) an order of possession based on a One Month Notice to End Tenancy For Cause under section 47 of the Act; and
- (ii) authorization to recover the cost of the filing fee under section 72 of the Act.

In addition, under section 58 of the Act, this hearing dealt with the tenant's July 4, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling the notice to end tenancy for unpaid rent (the 10 Day Notice), under section 46(4)(b) of the Act.
- (ii) an order to dispute a rent increase under section 41 of the Act.
- (iii) an order for the landlord to comply with the Act under section 62 of the Act.
- (iv) authorization to recover the cost of the filing fee under section 72 of the Act.

Issues

1. Is the tenant entitled to an order cancelling the 10 Day Notice?
2. Is the landlord entitled to an order of possession?
3. Is the landlord or tenant entitled to recover the cost of the filing fee?
4. Is the tenant entitled to an order to dispute a rent increase?
5. Is the tenant entitled to an order for the landlord to comply with the Act?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began August 14, 2019. Rent is \$1,624.00 due on the first day of the month. The landlord currently retains a \$800.00 security deposit and a \$800.00 pet damage deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the 10 Day Notice on June 25, 2023, by registered mail. Page two of the 10 Day Notice indicates that the tenant did not pay utilities in the amount of \$366.79 following written demand on May 22, 2023. All pages of the 10 Day Notice were served and submitted into evidence. The tenant acknowledged receiving the 10 Day Notice on June 27, 2023. The tenant disputed the 10 Day Notice on July 4, 2023.

The landlord affirmed that:

- the tenant is responsible for paying for utilities including water, sewer and garbage under the tenancy agreement. The landlord submitted as evidence a tenancy agreement (the Tenancy Agreement), which confirms this information.
- the town where the rental unit is located bills for utilities prospectively i.e. the residents have to pay for the entire year's utility charges in advance at the beginning of the year. For the year of 2023, the landlord paid the annual amount of \$819.83 for the tenant.
- he served the tenant with the 30-day demand letter on May 22, 2023, before serving the 10 Day Notice on June 25, 2023.
- the tenant did not pay for any utilities from January 2023 to May 2023. From June 2023 to August 2023, the tenant paid only the water portion of the utilities (she did not pay for the sewer and garbage portion of the bill). The tenant paid \$31.76 per month for water (totaling \$95.28 for the three months).
- the tenant is currently \$451.36 in arrears for utilities.

The tenant affirmed that:

- she applied late to dispute the 10 Day Notice because she thought the weekend was not included in the 5-day period (she thought she had 5 business days to dispute).
- for the first few years of her tenancy, she was only responsible for paying the water portion of the utilities bill. This was based on previous tenancy agreements signed between the tenant and the landlord for the same rental unit.
- the Tenancy Agreement, which was the latest tenancy agreement between the two parties starting on July 1, 2022, required the tenant to pay for utilities including water, sewer and garbage. She signed the Tenancy Agreement without properly reading over it so did not realize she was responsible for paying for sewer and garbage. The landlord never orally discussed with her that sewer and garbage would be included in the new Tenancy Agreement.
- she did not pay for utilities from January 2023 to May 2023 and has only paid the water portion of the utility bill from June 2023 to August 2023. She only paid for the water portion of the utility bill because she thought that was the only portion she was responsible for.
- she received the utility bill issued by the town (the Utility Bill) from the landlord at the end of February 2023.

Analysis

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent. Section 46(1) of the Act allows landlords to end a tenancy with a *10 Day Notice to End Tenancy for Unpaid Rent* on any day rent remains unpaid after the day rent is due.

Section 46 of the Act provides that, if utility charges remain unpaid for 30 days after the tenant is given a written demand for payment, the landlord may treat the unpaid utility charges as unpaid rent and may issue a *10 Day Notice to End Tenancy for Unpaid Rent*.

When a *10 Day Notice to End Tenancy for Unpaid Rent* is received by a tenant, that tenant must, within 5 days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. If the tenant fails to do so, the tenant is conclusively presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of the relevant notice.

Under section 66 of the Act, the director may extend a time limit established by the Act only in exceptional circumstances. Policy Guideline 36 (*Extending a Time Period*) provides some examples of what might *not* be considered exceptional circumstances, including:

- the party did not know the applicable law or procedure.
- the party was not paying attention to the correct procedure.

In this case, the tenant received the 10 Day Notice on June 27, 2023. The tenant, however, only disputed the 10 Day Notice on July 4, 2023, which is more than 5 days after the tenant received the 10 Day Notice (the tenant needed to dispute the 10 Day Notice by July 3, 2023). The tenant affirmed that she applied late because she thought she had 5 business days to dispute the 10 Day Notice. As per Policy Guideline 36, a party not knowing the applicable law or procedure is not considered exceptional circumstances. Accordingly, I find that the tenant is conclusively presumed to have accepted the end of the tenancy.

A copy of the order of possession is issued with this Decision to the landlord. The landlord must serve a copy of the order of possession upon the tenant.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55 of the Act. As per section 46 of the Act, if utility charges remain unpaid for 30 days after the tenant is given a written demand for payment, the landlord may treat the unpaid utility charges as unpaid rent.

I find that the tenant is responsible for paying for utilities including water, sewer and garbage as this is what is stated in the Tenancy Agreement, which both parties agree is the latest tenancy agreement between them. In addition, both parties agree that (i) the tenant did not pay for any utilities from January 2023 to May 2023; and (ii) from June 2023 to August 2023, the tenant only paid the water portion of the bill for those months. The landlord affirmed that the tenant is currently \$451.36 in arrears for utilities. Since the tenant received (i) the Utility Bill at the end of February 2023; and (ii) the 30-day demand letter on May 22, 2023 (before being served with the 10 Day Notice on June 25, 2023), I find that the landlord has provided 30 days written demand before issuing the 10 Day Notice. Therefore, the landlord is entitled to treat the unpaid utility charges as unpaid rent.

In addition, I am not convinced that the tenant should be allowed to avoid paying utility charges just because the landlord never orally discussed with her that sewer and garbage would be included in the new Tenancy Agreement. It is the tenant's responsibility to read the Tenancy Agreement carefully. However, she affirmed that she signed the Tenancy Agreement without properly reading over it. A reasonable person in the tenant's position would read over the Tenancy Agreement in detail before actually signing the agreement and would realize that they were now responsible for paying for additional items.

Based on the above, the tenant is ordered to pay \$451.36 in unpaid utilities to the landlord.

Since the landlord was successful in this application, the landlord's application to recover the cost of the filing fee under section 72 of the Act is granted.

Since the tenant failed in her application, the tenant's application to recover the cost of the filing fee under section 72 of the Act is dismissed without leave to reapply.

The parties' other claims relate to the tenant's ongoing possession of the rental unit. I dismiss these remaining claims because the tenancy has ended.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is awarded an order of possession and a monetary order in the amount of \$551.36.

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: September 21, 2023

Residential Tenancy Branch