



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MT, CNR, OLC

For the landlord – OPR, MNR

### Preliminary Issues

HB advised me there was an error in the landlord's first name which was omitted from the tenant's application. The parties did not raise any objections to the error being corrected and this has now been amended on the style of cause.

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for more time to file an application to cancel a Notice to End Tenancy and applied to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities and for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The landlord applied for Order of Possession for unpaid rent or utilities and for a Monetary Order for unpaid rent or utilities.

The tenant and an occupant of the rental unit along with the landlord and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord's agent testified that they did not receive part of the tenant's evidence that was sent after the main package. This section of the tenant's evidence has not been considered pursuant to Rule 3.17 of the Rules of Procedure. The parties confirmed receipt of all other evidence. I have reviewed all oral

and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the tenant entitled to more time to file an application to dispute a Notice to End Tenancy?
- Is the tenant entitled to an Order to cancel the Notice to End Tenancy?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for utilities?

#### Background and Evidence

The parties agreed that this tenancy started on August 01, 2015 for a fixed term tenancy of one year ending on July 31, 2016. The tenant testified that rent for this unit is shown on the tenancy agreement as \$610.00 per month including utilities. The landlord testified that rent is \$500.00 per month and \$110.00 towards utilities. Rent is due on the first of each month.

HB testified that initially HA asked the landlord for a copy of a tenancy agreement as she needed something to show income assistance so they would pay her rent. HB testified that she understood that this was an interim tenancy agreement so HA could gain income assistance. HA asked the landlord to add the amount of \$110.00 to the rent because if the landlord only put \$500.00 down as rent then the tenant would only receive income assistance for that amount and would not be able to pay her utilities of approximately \$110.00 a month. HA informed HB that as soon as her income

assistance came through they could amend the tenancy agreement. HB was also looking into having the utilities on a monthly account.

HB testified that when the utility bills came in they were higher than \$110.00 and HA would not pay these bills. HB sent an email to HA with copies of the bills and followed this up with a conversation. The utilities were supposed to be paid based on the consumption used.

HB testified that their copy of the tenancy agreement was amended to show that "utilities are included in the rent except pending approval of an equal payment plan with Fortis. Note rent is \$500.00, \$110.00 towards utilities".

HB testified that the other occupant DW was supposed to have been added to the tenancy agreement but that was not done and because he paid the rent he should be considered a tenant. HB testified that the advert for this unit stated that rent was \$500.00 per month plus utilities and HB feels that she has been misled by HA.

HB referred to an addendum to the agreement made with DW and signed by him in which he has agreed that he should be the contact person regarding any tenancy issues and that he has been advised since Fortis declined the equal payment plan that utilities will be based on consumption and that \$110.00 of the \$610.00 paid each month will be applied to the actual bills and that any residual balance will be their responsibility.

HB testified that the HA did not pay the balance of the utility bills and therefore the landlord seeks to recover the amount of \$529.11 from the tenants. HB referred to copies of the utility bills and demands for payment included in documentary evidence.

HB testified that the tenants were served a 10 Day Notice for unpaid utilities (the Notice) on April 01, 2016, the Notice was posted to the tenant's door and sent by registered mail. The Notice informed the tenants that they owe \$529.11 that was due on February 28, 2016. The Notice informed the tenants that they have five days to either pay the

outstanding utilities or file an application to dispute the Notice. HB testified that the tenants have not paid the outstanding utilities and the landlord seeks an Order of Possession of the rental unit.

The tenant HA testified that she received a copy of her lease agreement on August 14, 2015. The lease agreement only names HA as the tenant and has only been signed by her as the tenant. HA testified that their lease agreement states that rent is \$610.00 per month and this includes utilities. The additional hand writing has not been included on the tenant's lease agreement stating that "except pending approval of equal payments plan with Fortis. Note rent is \$500.00, \$110.00 towards utilities". HA testified that the landlord has altered the terms of the lease agreement after it was signed by HA and only written this additional wording on the landlord's copy of the lease.

HA testified that at the start of the tenancy the landlord did fill in the form for income assistance but the tenant did not need to go on income assistance as DW was able to pay the rent. HA testified that when she informed HB that she could not afford to pay a hook up fee for utilities HB said if the tenant paid \$610.00 per month then this would cover utilities. HA testified that when she received the landlord's evidence package it contained the altered tenancy agreement and was not agreed to or signed by HA.

HA testified that at the time the landlord served the Notice there was no rent or utilities outstanding and therefore the Notice should be null in void. The tenant seeks an Order to cancel the Notice due to this. HA testified that DW was never added to the lease agreement and had no authority to make any changes to the lease agreement.

HA testified that the landlord has not complied with the *Act* with regard to the terms of the tenancy agreement and therefore the tenant seeks an Order for the landlord to comply with the tenancy agreement.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 14(1) and s. 14(2) of the *Act* which states:

**14** (1) *A tenancy agreement may not be amended to change or remove a standard term.*

(2) *A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.*

I find when this tenancy agreement was made the terms of the tenancy were written that the rent shall be \$610.00 per month including utilities. I am satisfied that sometime later the landlord's agent altered this term to include the wording "except pending approval of equal payments plan with Fortis. Note rent is \$500.00, \$110.00 towards utilities". Once the parties have both signed the tenancy agreement than without written approval of the tenant named on the tenancy agreement the landlord may not alter the terms of this agreement.

Consequently I find the lease agreement provided by the tenant is a legal and enforceable agreement and as such the terms of this agreement stand. Rent for this unit is \$610.00 per month which includes utilities. Any further document signed by any person other than the tenant is not enforceable. Parties can only be added to a tenancy agreement with the written consent of both parties and DW was not added as a tenant and therefore is not entitled to sign any further addendums to the tenancy agreement.

The tenant's application to cancel the Notice is therefore upheld as at the time the Notice was issued and served there was no outstanding utilities owed for this rental unit.

The landlord's application for an Order of Possession and a Monetary Order is therefore dismissed.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid utilities dated April 01, 2016 is cancelled and the tenancy will continue.

I Order the landlord to comply with s. 14 of the *Act* regarding alterations to the tenancy agreement and clause five of the tenancy agreement regarding the amount of rent changed for this unit. Rent remains at \$610.00 per month which includes utilities for the duration of the tenancy which ends on July 31, 2016.

The landlord's application is dismissed in its entirety without leave to reapply.

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: May 30, 2016

---

Residential Tenancy Branch