



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1360 ES Development Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the Tenant applied for:

- an order to cancel a One Month Notice to End Tenancy For Cause, dated October 19, 2021 (the One Month Notice); and
- the filing fee.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified they served their Notice of Dispute Resolution Proceeding (NDRP) and evidence on the Landlord by email, as requested, on November 5, 2021. The Landlord confirmed they received the documents. I find the Tenant served the Landlord in accordance with section 89 of the Act.

The Landlord testified they served their responsive evidence on the Tenant by posting it to the door on November 19, 2021. The Tenant confirmed they received the documents. I find the Landlord sufficiently served the Tenant on November 19, 2021, in accordance with section 71 of the Act.

Issues to be Decided

Is the Tenant entitled to an order to cancel the One Month Notice?

Is the Tenant entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars of the tenancy. The tenancy began on March 1, 2020. Rent is \$2,250.00, due on the first of the month. The Tenant paid a security deposit of \$1,125.00 which the Landlord still holds. Both parties submitted a copy of the tenancy agreement as evidence.

The Tenant testified there was supposed to be a monthly \$75.00 rebate for payment of rent on time.

The Landlord testified they served the One Month Notice on the Tenant in person on October 19, 2021, which the Tenant confirmed. A copy of the One Month Notice was submitted as evidence by the Tenant.

The Notice is signed and dated by the Landlord, states the effective date, states the reason for ending the tenancy, and is in the approved form. The One Month Notice does not give the address of the rental unit. The One Month Notice indicates the tenancy is ending because the Tenant is repeatedly late paying rent. In the Details of the Event(s) section on page 2 of the form, the Landlord states:

The tenancy agreement stipulates that the Tenant must pay rent and utilities on the 1st of every month. The tenant has been repeatedly late in paying rent or utilities within an unreasonably short period of time. In particular, the payments for rent were late in September and October 2020. The payments for utilities were late in March, April, August, September, and October 2021.

In fact, the payment for utilities for April 2021 is still outstanding as of October 19, 2021.

In their testimony, the Landlord submitted that the Tenant has been late paying rent in two different ways: first, late payment of rent in September and October 2020, second, by way of paying their 2021 utilities late for March, August, September, and October, or not at all, for April 2021.

The Tenant testified that in September 2020 they paid their rent to a previous landlord on September 2, 2020, due to an unforeseeable technical issue with their electronic payment.

The Tenant testified that on October 1, 2020, they paid rent of \$1,310.00 as they understood the remainder of the rent was covered by a COVID rental subsidy and an allowable deduction for a repair issue. The Tenant testified that the former Landlord served them on October 5, 2020 with a notice to end tenancy, as the Tenant did not receive the anticipated subsidy, and could not deduct rent for the repair. The Tenant testified they paid the remaining rent owing on October 13, 2020 to cancel the notice.

The Landlord testified they took over the tenancy agreement from the former landlord on April 30, 2021.

The Landlord testified that the tenancy agreement stipulates that the Tenant must pay rent and utilities on the first of every month. Page 2 of the tenancy agreement, section 3. Rent, subsection b) states "What is included in the rent:" and is followed by a series of checkboxes. In this agreement, some of the items checked off include: "water," "electricity," "heat," and "natural gas." Also checked is "Additional information:"; in the text box that follows, the previous landlord had filled in: "tenant is responsible for 50% of the utility payable @ \$135 pm, adjusted annually." In the hearing, it was clarified that "pm" indicates "per month." The Landlord testified they base their understanding that the Tenant must pay rent and utilities on the first of every month on section 3 b) of the tenancy agreement, described above.

The Tenant testified that the tenancy agreement lists the rent and utilities separately, the Tenant had understood them to be separate, and that the Tenant had paid them separately. The Tenant testified that under the previous landlord they had not been told the utilities were due on the first of the month, and that the Tenant was of the understanding that the expectation was simply that they pay the utility charges promptly. The Tenant acknowledged that they usually paid both the rent and the utilities by e-transfers on the first of the month, because it was convenient.

Landlord testified that the Tenant paid utilities late for the following months of 2021: March, August, September, and October.

The Landlord submitted as evidence a letter dated March 2, 2021, from the previous landlord, indicating that the utility portion of the March rent, \$135.00, was not paid. The letter indicates that due to higher utility usage in the previous year, which created a

shortfall in the Tenant's utility payments, the monthly utility portion is now \$175.00 and is due now.

The Tenant testified that after the March 2, 2021 utility overage notice under the previous landlord, they began to request copies of the utility bills before paying them, including for the months of August, September, and October 2021. The Tenant testified their request for the bill copies was an ongoing one, so they could account for the overages charged by the landlord.

The Landlord testified the Tenant paid 2021 utility charges late as follows. The August utility charges were paid on August 2, 2021; September charges were paid on September 4, 2021, and the October charges were paid on October 5, 2021.

The Landlord submitted as evidence a letter dated April 3, 2021, from the previous landlord, indicating that the utility portion of the April rent, \$175.00, was not paid and is due now.

The Landlord testified the April utility charge of \$175.00 has never been paid.

The Tenant testified they did not recall seeing the April 3, 2021 letter, but did recall receiving a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities, dated April 6, 2021, a copy of which was submitted by the Landlord as evidence. The Notice indicates that the Tenant has failed to pay utilities in the amount of \$619.47 following a written demand on March 2, 2021.

The Tenant testified that they paid the outstanding amount promptly on April 8, 2021, and believed they had settled all their arrears.

The Tenant also testified that while the current Landlord took over the tenancy agreement on April 30, 2021, until the One Month Notice was served, the Landlord had not mentioned any outstanding monies owed, even though the Tenant and the Landlord were in communication regarding other matters.

Analysis

I find the Landlord served the Tenant with the One Month Notice in accordance with section 88 of the Act.

I find the One Month Notice does not meet the form and content requirements of section 52 of the Act as it does not give the address of the rental unit as required by section 52(b); this part of the Notice was left blank. However, I do not find this to be a fatal flaw because I am confident the Tenant knows the address of the rental unit the hearing was regarding, and section 68 of the Act allows an arbitrator to amend a notice that does not comply with section 52 if satisfied that the person receiving the notice knew the information that was omitted from the notice, and in the circumstances it is reasonable to amend the notice.

Subsection (6) of section **46 Landlord's notice: non-payment of rent** explains when utility charges may be treated as unpaid rent:

(6) 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.

I accept the Landlord's affirmed testimony that the Tenant made utility payments as follows: the August utility charges were paid on August 2, 2021; the September charges were paid on September 4, 2021, and the October charges were paid on October 5, 2021. The testimony and evidence of the parties does not support the idea that the Landlord can treat the Tenant's utility charges as rent.

I do not accept the Landlord's argument that the Page 2 of the tenancy agreement, section 3. Rent, subsection b), indicates that the Tenant must pay rent and utilities on the first of the month. Further, I find the way the tenancy agreement has been filled out regarding utilities is confusing and appears contradictory: the checkboxes appear to indicate that utilities are included in the rent, but the "Additional information:" statement that "tenant is responsible for 50% of the utility payable @ \$135 pm, adjusted annually" appears to state the opposite.

In this decision I am not considering the Tenant's late payments of rent for September and October 2020, as Residential Tenancy Policy Guideline **38. Repeated Late Payment of Rent** advises that:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.

The late rent payments were over a year ago, and occurred twice.

Based on the testimony and documentary evidence before me, I do not find the Tenant has been repeatedly late in paying rent. Therefore, the One Month Notice is cancelled; the tenancy will continue until it is ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant is successful in their application, I order that the Tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The Tenant's application is granted.

The One Month Notice is cancelled; the tenancy will continue until it is ended in accordance with the Act.

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: December 6, 2021

Residential Tenancy Branch