



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RR, FFT

Introduction

The Tenant applied for dispute resolution (“Application”) and seeks an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”). They are also seeking to reduce rent for repairs, services or facilities agreed upon but not provided under section 65 of the Act and to recover the cost of the filing fee under section 72 of the Act.

The Tenant attended the hearing. The Landlords, V.S. and H.S.G., attended the hearing and were assisted by a Translator, A.S. 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.

The Tenant testified that they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlords on March 24, 2023 by leaving a copy in the Landlords’ mailbox. The Residential Tenancy Branch provided the Materials the Tenant on March 17, 2023 with instructions to serve within three days. The Landlord confirmed receipt of the Materials and stated they had sufficient time to review them, though stated the Tenant’s supporting evidence was not provided to them. The Tenant stated they followed the instructions provided to them by the Residential Tenancy Branch but could not confirm if they served their evidence on the Landlords.

As the Landlords confirmed they had sufficient time to review the Materials, I find that the Tenant’s Materials were sufficiently served in accordance with section 71(2)(c) of the Act, with the exception of the Tenant’s supporting evidence. As Rules 3.1 and 3.14 of the *Rules of Procedure* require an applicant’s evidence to be served to the respondent, I exclude the Tenant’s evidence from consideration as I find, on the

balance of probabilities, that the Tenant did not serve their supporting evidence on the Landlords.

V.S. confirmed the Landlords' evidence was served on the Tenant on April 10, 2023 by attaching a copy to the door of the rental unit. The Tenant confirmed receipt of the Landlords' evidence. I find that the Landlords' evidence was served in accordance with section 88 and 90 of the Act.

Preliminary Issue: Severing

The Tenant applied for multiple remedies under the Act, some of which were not sufficiently related to one another.

Rule 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the issues raised by the Tenant, I determined that the primary issue is the Tenant's request to cancel the Notice and I exercised my discretion to dismiss with leave to re-apply, all claims other than the one related to the Notice.

Issues to be Decided

- 1) Should the Notice be cancelled?
- 2) If not, are the Landlords entitled to an Order of Possession?
- 3) Are the Landlords entitled to a Monetary Order for unpaid rent or utilities?

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.

Both parties agreed that the tenancy started on March 1, 2022 and that rent is \$2,500.00 per month due on the first day of the month. A Security deposit of \$1,250.00 was paid by the Tenant which the Landlords still hold. The Tenant still occupies the rental unit. A copy of the written tenancy agreement ("Tenancy Agreement") was entered into evidence by both parties. The Tenancy Agreement lists V.S. as the sole

Landlord. V.S. confirmed that they and H.S.G. own the rental unit but as H.S.G. was not available when the Tenancy Agreement was signed, so only V.S.'s name is shown on the document.

V.S. Testified that the Tenancy Agreement requires the Tenant to pay the rent of \$2,500.00 per month and for 70% of the utility bills. They issued the Notice to the Tenant on March 12, 2023 in-person after the Tenant refused to pay their share of utilities for the billing cycles for January 2023 and February 2023. Up until this point there had been no issues with the Tenant's payments for rent or utilities.

V.S. stated that the utility bills are sent using the instant messenger application WhatsApp to a group containing the Tenant, who rents the main house and pays 70% of the total amount of utilities, and the tenants of the garage suite who pay 30% of the total amount of utilities. Copies of the utility bills for the January 2023 and February 2023 billing cycles and a request for payment were sent to the Tenant via WhatsApp on February 14, 2023. Follow up messages were sent on March 2, 4, 7 and 10, 2023 after the Tenant paid only the rent and not the utilities.

V.S. testified that the Tenant said that they would not pay for the utilities as the they were not using them as much in comparison to the tenants in the garage suite. I was referred to statements entered into evidence by the Landlords which put forward that there are three tenants in the garage suite and that the rental space of the Tenant amounts to 2,000 square feet and the garage suite measures 400 square feet. No payments have been made by the Tenant for rent or utilities since the Notice was issued.

The Tenant testified that they were away from the rental unit frequently due to their work commitments and that the family in the garage suite are washing and cooking throughout the day. Initially there had been only one tenant in the garage suite. They told the Landlord about their concerns regarding use of utilities within the rental property many times and feels that them paying 70% of the utilities is now too much. The Tenant acknowledged receiving the copy of the utility bills and the request for payment via WhatsApp on February 14, 2023. They also confirmed receipt of the Notice on March 12, 2023.

The Notice was entered into evidence by both parties, is signed March 12, 2023 and provides an amount of unpaid utilities in the sum of \$705.71 following a written demand on March 12, 2023.

Analysis

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 February 14, 2023 via WhatsApp. I also find that the Notice was issued on March 12, 2023 which is 26 days after the written demand for utilities was made.

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 Landlords issued the Notice 26 days after the written demand for utilities, I find that the Notice does not comply with section 46(6)(b) of the Act and is defective.

Therefore, I grant the Tenant's Application and I order the Notice to End Tenancy for Unpaid Rent or Utilities dated March 12, 2023 is canceled and is of no force or effect and the tenancy continues.

Conclusion

The Tenant's Application is Granted. The tenancy continues.

As the Tenant has been successful in their Application, I find they are entitled to the reimbursement of the filing fee. I order that the Tenant may make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the return of the filing fee.

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: April 20, 2023

Residential Tenancy Branch