



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, FF, MNDC

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue, which is a request to have a section 47 Notice to End Tenancy set aside, to be dealt with together.

I therefore will deal with the request to have the section 47 Notice to End Tenancy set aside and I dismiss with liberty to re-apply, the remaining monetary claim for \$1600.00,

Background and Evidence

The landlord served the tenant with the Notice to End Tenancy as follows:

47 (1) (d) the tenant or a person permitted on the residential property by the tenant has

(ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

- (iii) Put the landlord's property at significant risk;

The landlord testified that:

- The Notice to End Tenancy was given because the tenant did not pay the gas bill and as a result the heat was turned off in the winter.
- There are three rental units in this property all sharing the same utilities however the tenant had agreed to have the utility bills in her name.
- Failure to pay the Hydro bill and subsequent disconnection resulted in an inconvenience in an unreasonable disruption of heat to the other occupants.
- Having the heat off in the winter also put the landlord's property at risk, as pipes could have frozen.

The tenant testified that:

- The heat was cut off in the winter because the landlord failed to notify the tenant that the heating bill is due.
- The utility company cut off the gas while she was in the hospital having a baby and therefore she was not even aware that the utility had been cut off.
- She did agree to pay 50% of utilities in this rental unit and reluctantly agreed to have utilities in her name but she believes that the landlord should have them in his name since there are three tenants using the same utilities.

Analysis

It is my decision of the landlord has not shown that the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

Both sides agreed that the gas was cut off for a period of time in the winter however it's not clear as to whose is at fault.



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It is not reasonable that this tenant should have the utility bills in her name when there are two other rental units using the same utilities. The landlord is the one who should have utility bills in his name, and he can then bill all the tenants for their share of utilities.

Conclusion

The section 47 Notice to End Tenancy that was served on the tenant on May 8, 2009 is therefore cancelled and this tenancy continues. I further Order, that the landlord bear the cost of the filing fee paid for this hearing. The tenant may therefore deduct \$50.00 from future rent payable to the landlord.

The clause in the tenancy agreement requiring that this tenant have all the utility bills in her name is unconscionable and therefore not enforceable. The landlord must therefore put the utility bills in his name and then bill the tenants for the portion they each agreed to pay.

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 12, 2009.

Dispute Resolution Officer