

## **DECISION**

Dispute Codes      O

### Preliminary Issues

At the onset of the hearing the Landlord was signed into the hearing and advised that he experience trouble gaining access to the hearing. There was no one in attendance for the Applicant Tenant at the beginning of the hearing so the respondent Landlord was advised that we would have to wait on the line for ten minutes while I monitored the teleconference hearing to see if anyone signed into the hearing for the Applicant Tenant.

After ten minutes I began to explain to the respondent Landlord that I would be dismissing the Tenant's application. Before the respondent Landlord left the hearing the parties appeared on behalf of the applicant Tenant and advised they had trouble gaining access to the hearing.

After hearing the troubles the parties experienced when signing into the hearing I contacted the operator and was able to confirm the difficulties. I then informed the parties that my previous decision to dismiss the application was hereby quashed and we would be proceeding with the hearing as scheduled.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for Other reasons to seek Orders to have the Landlord establish terms of the tenancy agreement pertaining to utility costs, in accordance with the Act.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on May 14, 2010. The Landlord confirmed receipt of the hearing package.

The Landlord, the Tenant and the Tenant's Agent appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other. The Tenant and his advocate were accompanied by the Tenant's legal Advocate.

### Issues(s) to be Decided

Is the Tenant entitled to Orders under section 62 of the *Residential Tenancy Act*?

### Background and Evidence

The Tenant testified and confirmed that he is thirty five years of age, has a grade ten education, and while he has a disability he lives on his own conducting his own business and banking. He advised that he has lived in this rental unit since June 1, 2009 and that his current monthly rent is \$500.00 and is paid directly to the Landlord from his disability assistance. The Tenant stated that he took over the rental unit from his sister's tenancy agreement and his sister was with him when he brought the paperwork from the disability office to the Landlord to sign for his rent to be paid to the Landlord. The Tenant argued that at that time the Landlord told him that the hydro would be approximately \$50.00 and that the Tenant would have to pay the hydro. The Tenant referred to his documentary evidence which included a letter from his legal advocate and copies of the hydro and natural gas bills. The Tenant argued that he could not afford to pay the full hydro and natural gas bills which is comprised of usage from his suite as well as the rental unit in the basement. The Tenant stated that he tries to be responsible to pay his bills and has had to go without food or proper heat to accommodate the high costs of these utilities.

The Landlord testified and stated that the Tenant's rent was \$550.00 per month with a \$50.00 discount for utilities. The Landlord went on to explain that he reduced the Tenant's rent by \$50.00 for the Tenant to pay the hydro bill. When I requested information about the terms of the tenancy agreement he stated that he could not remember and then stated that he found a written tenancy agreement that he had entered into with the previous tenant who is this Tenant's sister. The Landlord testified that the previous tenant called him sometime in 2009 to advise that her brother was taking over the rental unit after which the Landlord completed the intent to rent documents to have a security deposit of \$250.00 and the monthly rent of \$500.00 paid directly to him. Upon further clarification the Landlord stated that he entered into a verbal tenancy agreement with the Tenant and the Tenant would continue to pay the hydro as his sister did. The Landlord confirmed that the rental unit is one of three separate units in the house which he purchased approximately six years ago. The Tenant's rental unit is on the main floor of the house and shares a hydro and gas meter with the rental unit located in the basement.

The Agent for the Tenant testified that the hydro and natural gas bills were put in her name in 2008 when her daughter took possession of the rental unit. The Agent contends that the current Tenant was not told that he would be responsible for natural gas costs in addition to the hydro and he was not initially aware that he would be paying

these costs on behalf of other tenants. The Agent stated that she was not present when the Tenant and Landlord entered in this agreement and the Tenant understood that his rent would be paid directly to the Landlord and he would pay approximately \$50.00 per month for hydro. The Agent argued that when the cost of the hydro and natural gas began to rise the Tenant did what he could to cover the costs. At times the Tenant would go without food, turn off the heat, or even reside elsewhere until he could afford to pay the bills. The Agent stated that she then approached the Landlord to try and come to an agreement to have the tenant in the lower suite share the costs of the utilities, to have the utility bills put in the Landlord's name, or have separate meters installed but the Landlord refused to come to a resolution. When asked why she did not bring this issue forward prior to May 2010 the Agent stated that she was not sure how to proceed as she wanted to be able to come to an agreement with the Landlord without coming to arbitration but she realized she had to do something to assist her son. The Agent is also seeking compensation for the utilities which are currently outstanding.

The Landlord confirmed the tenant in the lower unit does not pay for utilities, that these utilities are in the Tenant's mother's name, and he refuses to have an additional meter installed because he cannot afford to do so. The Landlord argued that the tenant in the lower suite has resided there for three to four years and is hardly there so he feels it would be unfair to have him pay for utilities while the upstairs Tenant is there all the time with guests. The Landlord confirmed the tenant is currently heating the lower suite with a portable electric heater because the upstairs tenant is conserving the natural gas and has the heat turned down. The Landlord argued the Tenant cannot afford to rent this unit and should move out.

### Analysis

All of the testimony and documentary evidence was carefully considered.

A “**tenancy agreement**” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. I find that based on the above definition, oral terms contained in, or form part of, tenancy agreements and may still be recognized and enforced. That being said I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

The evidence supports that the initial terms of the tenancy agreement were the Tenant's rent is payable monthly in the amount of \$500.00, as supported by the disability

payments being sent directly to the Landlord, and that the Tenant would be paying for the cost of hydro at approximately \$50.00 per month. In this case the Tenant has been paying for the cost of hydro and natural gas which is consumed by his rental unit and a separate self contained rental unit located in the basement.

Section 6 (3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under the term and / or if the term is unconscionable. In this case I find the verbal terms of the tenancy agreement to be unclear, as explained by the Landlord. I also find the Landlord's expectation that a tenant in a separate self contained suite is to be responsible for the cost of hydro and natural gas consumed in a separate self contained suite to be unconscionable. I do not accept the Landlord's argument that the Tenant cannot afford to rent this unit and should simply move out.

Having found above, that the terms relating to payment of the utilities are unconscionable and unenforceable, I HEREBY ORDER the hydro account and natural gas account to be switched into the Landlord's name **no later than July 9, 2010**. The Tenant's Agent is at liberty to provide a copy of this decision to the hydro and natural gas companies to ensure the utilities are put in the property owners name in accordance with my Orders.

The Landlord is required to issue the Tenant a written request for payment of 50% of the hydro and 50% of the natural gas bills, once they begin to be billed to the Landlord, and the Landlord **must** attach a copy of the actual hydro and natural gas bills to support the amounts the Tenant is required to pay. The Tenant is HEREBY ORDERED to pay 50% of the hydro and natural gas bills within 10 days of receiving the Landlord's written request and copies of the utility bills for the remainder of the tenancy.

I HEREBY ORDER the Landlord to enter into a written tenancy agreement with the Tenant which is in the proper format and contains the standard terms of a tenancy agreement in accordance with section 13 of the Act. The tenancy agreement must indicate: a) rent is payable in the amount of \$500.00 per month; b) the Tenant is responsible to pay 50% of the hydro costs and 50% of the natural gas costs; and c) a security deposit of \$250.00 was paid on June 1, 2009.

Section 32 of the Act provides that a Landlord must provide and maintain the rental unit in a state of decoration and repair that complies with health, safety and housing standards required by law.

The evidence supports that there is one thermostat to control heat in two separate rental units with the upstairs Tenant having control of the heat in the lower rental unit. I find that in circumstances where tenants are responsible for paying utilities and one

rental unit has control of the thermostat which heats the other rental unit restricts one rental unit from having a properly heated rental unit.

Based on the aforementioned I hereby order the Landlord to have a programmable thermostat installed and programmed with temperatures that are mutually agreed upon, in writing, between the upper Tenant and the lower tenant, after which the thermostat is to be encased in a locked cover to prevent either tenant from accessing the thermostat, no later than July 30, 2010.

The evidence supports that neither the Tenant nor his Agent attempted to have these issues resolved prior to May 2010. Therefore I find the Tenant and his Agent did not mitigate the losses, in accordance with section 7 of the Act, and I hereby dismiss their request for reimbursement or compensation for the current or previous amounts for hydro and natural gas costs. Based on my Orders listed above, the Tenant is responsible for 100% of the costs of hydro and natural gas until July 8, 2010 and from July 9, 2010 onward the Tenant is responsible for 50% of the cost of hydro and natural gas.

#### Conclusion

**I HEREBY ORDER** the hydro account and natural gas account to be switched into the Landlord's name **no later than July 9, 2010.**

The Tenant is **HEREBY ORDERED** to pay 50% of the hydro and natural gas bills within **10 days** of receiving the Landlord's written request and copies of the utility bills for the remainder of the tenancy.

**I HEREBY ORDER** the Landlord to enter into a written tenancy agreement with the Tenant, in accordance with the Act, **no later than July 9, 2010.**

**I HEREBY ORDER** the Landlord to install a locked, programmable thermostat no later than **July 30, 2010.**

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: July 06, 2010.

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Dispute Resolution Officer