

DECISION

Dispute Codes OLC, O

Introduction

This was an application by the tenant seeking an order to force the landlord to comply with the Act or agreement by including utilities in the rent.

Despite being served by registered mail sent on September 10, 2010, the respondent landlord did not appear.

Issues(s) to be Decided

The tenant was seeking to have the tenancy agreement enforced by including utilities in the monthly rental payment. The issues to be determined are whether or not there was an agreed-upon term in the tenancy agreement to include cost of utilities in the \$550.00 monthly rent and whether an order should be granted to force the landlord to comply.

Background and Evidence

The tenancy began on November 1, 2009 with rent set at \$550.00 and the tenant paid a security deposit of \$275.00 and pet damage deposit of \$275.00. There was no written tenancy agreement. The tenant testified that when she rented the unit, the landlord had verbally agreed to a rental rate of \$550.00 per month including utilities. The tenant testified that this allegation is supported by the evidence consisting of a Ministry of Housing and Social Development form signed by the landlord confirming shelter information for the tenant dated October 26, 2009. The tenant confirmed that this evidence was served on the landlord.

The tenant testified that after she moved into the unit she received a notice from the utility company requiring the tenant to transfer the utilities into her own name. The tenant testified that she then contacted the landlord and he refused to put the utilities in the landlord's name, taking the position that utilities were not included in the rent, despite the official document that he had signed for the Ministry. According to the tenant she was then forced to put the utilities into her own name in order to avoid a pending utility cut-off and she subsequently incurred extra costs of \$253.17 beyond the \$550.00

rent to pay for utilities. The tenant had submitted into evidence copies of utility invoices confirming the charges.

The tenant was seeking an order that the landlord comply with the agreed-upon tenancy terms by putting the utilities into the landlord's name and having the utility costs included in the rent, as well as monetary compensation in the amount of \$253.17

Analysis

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are also enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*].

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that

- (i) are required or prohibited under this Act, or
- (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

Section 13 of the Act requires that a landlord prepare in writing every tenancy agreement entered into and within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement. The Act also specifies that a tenancy agreement must comply with the Act and regulations and set out standard terms and other data including:

- the correct legal names of the landlord and tenant;
- the address of the rental unit;
- the date the agreement is entered into and the tenancy starts;
- the address for service and telephone number of the landlord or agent;
- the agreed terms about whether the tenancy is for a fixed term or periodic tenancy
- the amount of rent payable and whether it rent varies with the number of occupants
- what day in the period that the rent is due;
- which services and facilities are included in the rent;
- the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

However, in cases where there is no written contract, oral terms contained in verbal tenancy agreements may still be recognized and enforced. Section 1 of the Act, defines “tenancy agreement” as follows:

“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;

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if ; (a) the term is inconsistent with this Act or the regulations, (b) the term is unconscionable, or (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it. Verbal tenancy terms become unclear if they are disputed.

That being said, in the matter before me, I find that the landlord had an obligation under the Act to create a compliant tenancy agreement in writing. I find that, had the landlord followed the Act, the tenancy terms regarding what was to be included in the rent would have been clarified.

In any case, I find that I must accept the tenant’s testimony that the parties had agreed that utilities were supposed to be included in the rent because even it could be successfully argued that no express term existed, I find as a fact that there was at the very least an implied term that the \$550.00 included utilities, given the official form signed by the landlord on October 26, 2010. .

Based on the evidence and testimony I find that the rent of \$550.00 rent includes utilities and that this is an enforceable term of the tenancy agreement. Accordingly, I find that the tenant is entitled to be reimbursed in the amount of \$253.17 and I order that the tenant’s next rental payment owed to the landlord be reduced by this amount and the tenant is entitled to withhold the \$253.17 as a one-time abatement in the rent.

In addition to the above, I find that the landlord is required to have the utility account placed under the landlord’s name forthwith and that this account be paid by the landlord starting immediately. Should the landlord fail to put the utility account in the landlord’s name, the tenant is at liberty to make an application for dispute resolution seeking to have this order enforced through a corresponding rent abatement equal to the cost of the utilities or other remedy.

Conclusion

I hereby order that the \$550.00 monthly rental rate includes utilities and I order that the landlord have the utility account transferred to the landlord without delay. This order must be served on the landlord and can be enforced if the landlord fails to comply.

I hereby order that the tenant deduct \$253.17 from the next month rent owed to the landlord as a one-time lump-sum abatement to reimburse the tenant for utilities paid.

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*.