

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenant for money owed or compensation for damage or loss, to have the landlord comply with the Act and recovery of the filing fee. Both parties participated in the conference call hearing.

Issues to be Decided

Are the tenants entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started in February 2009 and the tenancy agreement notes that the tenants will pay for the gas and hydro.

The tenant testified that they pay utilities for both the upper and lower units in the house. The tenant stated that the landlord did not tell them that they would be responsible for the utilities for both units and the tenant believes that they should be held responsible for only 60% of the gas bill and 90% of the hydro bill.

The tenant stated that as they do not have possession of the entire space downstairs and should not be responsible for the gas and electrical bills associated with the unfinished downstairs space. The tenant stated that someone is typically home all day and night as the tenant is a stay at home mom with a young child. The tenants have submitted gas bills for the past year and the pro-rated consumption from January 2010 to November 2010 is \$94.26 per month.

The landlord testified that there is no requirement for a shared utility agreement as the basement is an unfinished space, it is not a separate unit that is being rented out and that the tenants are the sole occupants of the residence. The tenants have access to the lower portion of the house where the laundry facilities are located. The landlord stated that the tenants have full control of the heat and electricity in the residence and that the tenants were leaving their outside Christmas lights on all day and night and that the tenants often sit outside to smoke with the door open.

The landlord stated that the 3 heat vents in the unfinished space, on advice from the gas company, have been sealed with vapour barrier and stuffed with insulation so that the unfinished space is not heated. As this area is not occupied, the lights remain off and electricity is not required in this area.

The landlord stated that he is in full agreement that if the unfinished space is made into a separate unit that a shared utility agreement will be required.

Analysis

Based on the documentary evidence and undisputed testimony of both parties, I find on a balance of probabilities that the tenants have not met the burden of proving that they have grounds for entitlement to a monetary order for compensation or loss.

I also find that there is no requirement under which the landlord must be ordered to comply with the Act.

As the tenant's have not been successful in their application they are not entitled to recovery of the \$50.00 filing fee.

Conclusion

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: January 17, 2011

Residential Tenancy Branch