



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes O

Introduction

This hearing dealt with an application by the tenants seeking a declaration that a term of the tenancy agreement is unfair. Both parties participated in the conference call hearing.

The landlord submitted evidence to the Residential Tenancy Branch but did not submit a copy to the tenants. This evidence was not considered as the tenants were not served with and had no opportunity to view the evidence.

Issue to be Decided

Are the tenants entitled to a declaration that the term of their tenancy agreement requiring them to pay hydro is unfair?

Background and Evidence

The rental unit is on the main floor of a home in which both the upper and lower floors are rented by other tenants under separate tenancy agreements with the landlord. The parties agreed that at the outset of the tenancy in November 2010, they agreed that the tenant was obligated to pay \$750.00 per month in rent as well as paying for hydro.

The tenant testified that several days after he moved in, he learned that the boiler in the home did not work and the rental unit was heated exclusively through electric heaters. The tenant further testified that the hydro usage from the washer and dryer which are used by all the tenants in the building as well as exterior lights and several interior lights are billed to him. The tenant stated that his hydro bill for a two month period was in excess of \$900.00.

The landlord testified that at the outset of the tenancy he did not mention that the furnace was inoperable, but recalls having told the tenant that the electric baseboard heaters would provide sufficient heat.

Analysis

I find that the landlord had an obligation to inform the tenants that the rental unit was exclusively heated by heaters which required hydro and I find that he failed to do so. Without having been expressly advised that this was the case, the tenants would reasonably have believed that the unit had a central heating system. I find that the tenants are currently paying for hydro which is consumed by other tenants through their use of the washer and dryer as well as for lights in common areas. I find the tenants' hydro bill to be disproportionately high as a result and I find that the term in the tenancy agreement which requires the tenants to pay 100% of the hydro costs is unconscionable and cannot be enforced.

Having found that the term is unconscionable, I find that it is reasonable that the tenants should have to pay for some of their hydro costs given that they were prepared to pay for costs incurred solely through their own use. The tenants' claim was exclusively for an order that the term be found to be unfair. Although I have found the term to be unfair and unconscionable, in the absence of a claim for compensation, I am unable to grant the tenants a monetary award. I am not prepared to rewrite the offending provision in terms which are fair as there is no evidence before me showing what a fair amount would be.

The parties are encouraged to negotiate in an effort to resolve this issue. If they are unable to arrive at an agreement, the tenants are at liberty to bring a further application for dispute resolution for a monetary award to compensate them for prior overpayment of hydro and for a determination as to what a fair percentage of the hydro costs should be. In the event such an application is made, the parties should provide evidence to assist the dispute resolution officer in making that determination.

Conclusion

The term in the tenancy agreement requiring the tenants to pay for hydro which is consumed by other tenants is unfair.

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: February 16, 2011

Residential Tenancy Branch