



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, MNDC, ERP, RP, LRE, RR, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for unpaid rent, for compensation for an overpayment of utilities, for emergency repairs and general repairs, for a rent reduction, for an order placing restrictions on the Landlord's right to enter onto the rental property and to recover the filing fee for this proceeding.

RTB Rule of Procedure 2.3 states that "if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." I find that the Tenant's claim for emergency repairs and general repairs, for a rent reduction and for an order placing restrictions on the Landlord's right to enter onto the rental property are unrelated to the balance of his claim and as a result, they are dismissed with leave to reapply.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is the Tenant entitled to compensation for an alleged overpayment of utilities?

Background and Evidence

This month-to-month tenancy started on May 1, 2008. The rental property contains an upper and a lower suite. The Tenant rents the upper suite. At the beginning of the tenancy rent was \$1,050.00 per month. The Landlord increased the rent to \$1,150.00 effective February 1, 2010. The Parties' tenancy agreement says that the Tenant is responsible for paying utilities (other than water). The Tenant said the Landlord wanted him to put the hydro bill for the rental property in his name which caused him some concern. As a result, the Tenant and the Landlord's agent wrote on the tenancy agreement that the Tenant would pay 60% of the hydro, the basement suite would be responsible for 40% of the hydro and "if [the] suite does not pay me back [the] Landlord will." The hydro bill was put in the Landlord's name as of December 8, 2010.

The Tenant said that the Landlord advised him at the beginning of the tenancy that he expected that the basement suite would be regularly rented out. However, the Tenant

said the basement suite was vacant for the first 2 years of the tenancy and the Landlord advised him that during these times, the Tenant would be responsible for 100% of the hydro bills for the rental property. The Tenant said he objected to this and the Landlord later offered to reimburse him 10% of the hydro bills for the winter months to maintain a low ambient temperature in the vacant lower suite so that the pipes would not freeze. The Tenant said he did not agree to this offer either. The Tenant said the Landlord paid him \$349.95 with respect to utilities owed by the tenant who occupied the lower suite from February 1, 2010 to August 1, 2010 and the tenant of that suite paid him \$250.00 for a total of \$599.95. The Landlord claims that the tenant of the lower suite made a payment of \$350.00 on the utilities.

The Landlord claimed that the Tenant agreed from the beginning of the tenancy that he would be responsible for 100% of the utilities when there was no tenant occupying the lower suite because there would be no energy consumed in that suite. The Landlord said the Tenant did pay this amount until very recently which is evidence of that agreement. The Landlord argued that the Tenant's claim to recover utility expenses was motivated by his loss of the lower suite which the Landlord claimed the Tenant was accustomed to using when it was vacant. The Landlord also argued that the Tenant had put the hydro bills in his company name which showed that he was operating a business from the rental unit and therefore was likely consuming most of the hydro used on the property.

The Landlord said his agent served the Tenant in person on February 2, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2011. The Tenant said he made a payment for the outstanding rent and utilities directly to the Landlord's account within the 5 days granted on the 10 Day Notice. The Landlord said he was unsure if this was the case or not.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution.

The Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy; ie. that the rent and/or utilities have not been paid within 5 days. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The Tenant claimed that the arrears had been paid within 5 days of him receiving the 10 Day Notice. In the absence of any evidence from the Landlord to show that rent was not paid as claimed by the Tenant, I find that the Landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is cancelled and the tenancy will continue.

Section 13 of the Act places on the Landlord the responsibility for completing a written tenancy agreement that sets out the amount of rent and what services and facilities are included in the rent. Section 6 of the Act says 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 it. Consequently, the Landlord also has a responsibility to ensure that terms of the agreement are clearly stated so that a Tenant can determine what his obligations are. Given that the Act allows a Landlord to evict a Tenant for not paying utilities, a term of a tenancy agreement regarding the payment of utilities must clearly express what the Tenant's obligations are in that regard.

The Parties' tenancy agreement states that the Tenant is responsible for 60% of the hydro for the rental property and the lower suite is responsible for paying 40% of the hydro. There is nothing in the tenancy agreement that says the Tenant is responsible for paying 100% of the hydro bills if the lower suite is not occupied. In the absence of such a term, I find that there is (and was) no authority for the Landlord to require the Tenant to pay 100% of the utilities for the rental property when the lower suite was unoccupied. Although the Landlord claimed that the Tenant was operating a business from the rental property which was not agreed to when he signed the tenancy agreement, the Landlord provided no evidence of that. Consequently, I find that the Tenant is entitled to recover an overpayment of utilities from the Landlord for the period May 2008 to December 2010.

The Tenant provided a worksheet that alleged he had made an overpayment of \$1,069.04 however I find that there are some errors in the Tenant's calculations. In particular, I find that the Tenant included an amount of \$350.00 (as a charge) that he paid as a security deposit and which he admitted that he has received credit for on another billing statement. The Tenant also failed to include an amount credited to him on a billing statement dated September 1, 2009 for \$281.16. Consequently, I find that the total amount billed for the period May 2008 to December 2010 was \$3,970.23 (\$4,251.39 less a credit of \$281.16). The Parties agree that the Landlord has paid \$349.95 but disagree whether the tenant in the lower unit paid \$350.00 (as alleged by the Landlord) or \$250.00 (as alleged by the Tenant).

The Tenant admitted that the other tenant made a payment in cash for the utilities and that he did not give him a receipt. In the circumstances, I find that the Tenant has the burden of proof to show that he was paid \$250.00 instead of the \$350.00 alleged. Given the contradictory evidence of the Landlord and in the absence of any corroborating evidence from the Tenant to resolve the contradiction, I find that the Tenant has provided insufficient evidence to conclude that \$250.00 was paid and I find instead that \$350.00 was paid as alleged in that tenant's witness statement. Consequently, I find that the Landlord must reimburse the Tenant for an overpayment of utilities as follows:

Total Hydro billings:		\$3,970.23
Landlord's share @ 40%:	\$1,588.09	
Amount paid:	<u>(\$699.95)</u>	
Balance Owing:	\$888.14	

As the Tenant has been successful in this matter, I also find pursuant to s. 72(1) of the Act that he is entitled to recover from the Landlord, the \$50.00 filing fee he paid for this proceeding. In summary, the Tenant has made out a total monetary claim for **\$938.14**. I order pursuant to s. 72(2) of the Act that the Tenant may deduct this amount from his next rent payment when it is due and payable to the Landlord.

Conclusion

The Tenant's application for emergency repairs and general repairs, for a rent reduction and for an order placing restrictions on the Landlord's right to enter onto the rental property are dismissed with leave to reapply. The Tenant's applications to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2011 and to recover an overpayment of utilities are granted.

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 24, 2011.

Residential Tenancy Branch