



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenants' application for a Monetary Order for return of double the security deposit and pet deposit; and, compensation for damage or loss under the Act, regulations or tenancy agreement. The female tenant appeared and confirmed she was representing both named tenants.

I heard that the tenants had named the former agents in making this application. The owner appeared and the hearing and both the owner and the former agent confirmed that the landlord is currently in possession of the deposits. By consent I have amended this application to name the owner as the landlord.

Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Have the tenants established an entitlement to return of double their security deposit and pet deposit?
2. Have the tenants established an entitlement to compensation with respect to utility costs?

Background and Evidence

The parties provided undisputed testimony with respect to the following tenancy information. The tenancy commenced December 15, 2010 and ended March 15, 2011. The tenants were required to pay rent of \$1,400.00 and paid a \$700.00 security deposit and a \$500.00 pet deposit. The tenants were required to pay rent on the 15th of every month. The rental unit was the upper level of a house and a basement suite on the lower level was also tenanted. The upper tenants were responsible for 2/3 of utility costs and the basement suite tenants were to pay 1/3 of utility costs.

Both parties provided consistent testimony that the utility bills were put into the tenants' name after the tenancy commenced and the tenants had to ask the basement suite tenant for his 1/3 share of the bills. The basement suite tenant did not pay the tenants any money for utilities. At the end of February 2011 the tenants advised the landlord's agent that they had not received any payment for utilities. The agent included the unpaid utilities on a 10 Day Notice to End Tenancy issued to the basement suite tenant March 1, 2011. The basement suite tenant subsequently vacated the rental unit without paying for utilities.

The tenants are seeking to recover \$550.00 from the landlord for the utilities consumed by the basement suite tenant for which they were not reimbursed. The tenants provided copies of hydro and gas bills as well as a detailed calculation showing they are owed \$524.15.

The owner was of the position she should not be responsible for paying the tenants for utilities because:

1. The landlord had the utilities and paid the utilities for the time period up to December 1, 2010.
2. The landlord did not reside in the residential property or consume the utilities for the period of time the tenants are seeking compensation.
3. The landlord or the landlord's agent has not received any monies from the basement suite tenant for the utilities; however, a hearing was set to be heard with the basement suite tenant the day following this hearing.
4. The tenants did not put the utilities in their name until December 23, 2011 despite taking occupancy of the property before that date.
5. The tenants should have notified the landlord's agent about the unpaid utilities sooner.

The landlord provided copies of the hydro and gas bills showing the accounts were in her name up until December 1, 2010.

Near the end of the hearing the landlord submitted that if the tenants were entitled to compensation for utilities consumed by the other tenant, she would have calculated the amount differently. In light of a detailed and written calculation being provided by the tenants prior to this hearing and the absence of such evidence from the landlord I did not provide the landlord more time to submit an alternative calculation. I informed the landlord that the time to submit an alternative calculation was five days prior to the hearing.

With respect to the tenants' claim for the security deposit and pet deposit, the tenant testified that she was uncertain as to when or how the landlord was provided a forwarding address in writing. The landlord's agent testified that a forwarding address had not been received from the tenants in writing.

Analysis

The written tenancy agreement indicates the rent did not include heat or electricity; however, the written tenancy agreement is silent as to the apportionment of utility costs between units that are on the same utility meter. Accordingly, I find it reasonable to conclude the tenants agreed to be responsible and pay for the hydro and gas they consumed. I find it equally reasonable to conclude that the tenants did not agree to pay for hydro or gas consumed by another tenant living in another unit sharing the same utility meters. I find that to require the tenants to be responsible for paying for utility costs incurred by another tenant in another unit to be unconscionable unless the tenants were otherwise compensated by the landlord, such as by a rent reduction. I did not hear that the tenants were otherwise compensated by the landlord for paying for all of the utilities incurred at the residential property.

Where a landlord has a residential property that has one utility meter serving more than one living unit it is common to include utilities in rent payable or apportion the utility bills among the tenants sharing the service. However, the Act, nor the tenancy agreement, places an obligation on the tenant to take on the landlord's responsibility of demanding payment and collecting utilities from another tenant. I find that to impose such an obligation upon a tenant is unconscionable as the tenant does not have input as to who the landlord chooses for a tenant and is not privy to the contract between the landlord and the other tenant. Thus, the tenant would have no legal right to demand payment from the other tenant and no means to enforce payment against the other tenant.

An unconscionable term is one that is oppressive or grossly unfair to one party, as defined in section 3 of the Residential Tenancy Regulations. Section 6 of the Act provides that unconscionable terms are unenforceable.

In light of the above, I reject the landlord's submission that the tenants were responsible for collecting the other tenant's share of utilities and should bear the loss associated with the other tenant not paying for his share of utilities.

I further find that the tenants did submit to the landlord's agent that they had not received payment from the other tenant as evidence by the agent's testimony and

acknowledgement that the amount was included on a 10 Day Notice issued by the agent.

Considering all of the above, I grant the tenants recovery of \$524.15 for the utility costs they incurred, as supported by their detailed calculation. I also award the filing fee to the tenants as their claim had merit. Therefore, I provide the tenants with a Monetary Order in the total amount of \$574.15 to serve upon the landlord.

As I was not provided sufficient evidence that the tenants had provided the landlord or landlord's agent with a forwarding address in writing prior to making this application I dismiss the tenants' claim for return of the deposits with leave to reapply. The tenants remain at liberty to give the landlord their forwarding address in writing and the landlord must comply with section 38 of the Act.

Conclusion

The tenants have been awarded \$574.15 as compensation for utility costs and their filing fee. The tenants' request for return of double the security deposit and pet deposit has been dismissed with leave to reapply.

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: September 20, 2011.

Residential Tenancy Branch