



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with the tenants' application to cancel a Notice to End Tenancy for cause; for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; and, recovery of the filing fee paid for this application. 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. Should the Notice to End Tenancy be upheld or cancelled?
2. Have the tenants established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy agreement provides that the tenants are required to pay rent of \$975.00 plus 40% of hydro and gas bills. The rental unit is the lower level of a house and the upper level is also tenanted. There is only one hydro meter for both rental units. The tenants put the hydro bill in their name starting July 1, 2011 and closed the account effective September 1, 2011. The tenants were issued a hydro bill on September 6, 2011 in the amount of \$347.50. On September 18, 2011 the tenants sent the landlord a letter requesting the landlord pay them \$208.50, representing 60% of the hydro bill. The landlord served the tenants with a 1 Month Notice to End Tenancy for Cause (the Notice) on September 20, 2011. The Notice indicates the landlord's reason for ending the tenancy is because the tenants have *significantly interfered with or unreasonably disturbed another occupant or the landlord*.

In making this application the tenants are seeking to have the Notice cancelled. In addition, the tenants are seeking compensation from the landlord in the amount of

\$208.60 representing 60% of the hydro bill they paid for the period of July 1 through September 1, 2011.

The landlord testified that he issued the Notice because the tenants were demanding the landlord pay 60% of their hydro bill and because the tenants had called a plumber to see when the plumber was available to attend to the property to deal with a plumbing issue. The landlord stated that he does not want to end the tenancy but that he wanted to convey to the tenants that they must communicate with the landlord and not take matters into their own hands.

The landlord was of the position that he does not owe the tenants for hydro. Rather, the upper tenant, who was evicted for unpaid rent, owes the tenants for 60% of the hydro. The landlord explained that he requires the upper tenants to put hydro and gas accounts into their name and then seek payment 40% of the bills from the lower tenants. In this case, the lower tenants took it upon themselves to put hydro in their name without calling the landlord first. Had the tenants called the landlord the landlord would have put the hydro in his name.

The tenant testified that before the upper tenant moved out, she came to the tenants and explained that she was unable to get hydro in her name due to a previous balance owing. Rather than risk hydro being disconnected, the tenants put the hydro in their name. Then the upper tenant was evicted before the hydro bill came and before the tenants could seek payment from her. As of September 2011 new tenants moved into the upper unit and have put hydro in their name. The tenants now pay 40% of the hydro bill to the new upper tenants.

Documentary evidence provided for this proceeding included a copy of the: tenancy agreement; hydro bill; letter to the landlord dated September 18, 2011; and, the Notice to End Tenancy for Cause dated September 20, 2011.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. In order to succeed in obtaining compensation, the applicant must show that the other party violated the Act, regulations, or tenancy agreement; that the violation caused the party making the application to incur damages or loss as a result of the violation; and, verification of the loss.

Upon review of the tenancy agreement, I accept that the tenants are responsible for paying 40% of the hydro bill. The tenancy agreement does not provide for who shall obtain a hydro account or if a third party is to put the hydro in their name, what the remedy is if that does not occur.

I accept that the landlord's practice has been to require the upper tenants to open a hydro account and request payment from the lower tenants. However, I reject the landlord's position that the tenants remedy is to sue the other tenants if bills are not paid since the tenants do not have a contract with each other. Rather, it is the landlord who has contracts (tenancy agreements) with the tenants of each unit and a contractual obligation to pay for a portion of hydro is provided for in the tenancy agreements. Accordingly, the remedy for disputes concerning hydro bills is between the landlord and tenants.

The tenants have satisfied me that they are required to pay 40% of hydro bills pursuant to their tenancy agreement yet they actually paid 100% of the hydro bill for the period of July 1 through September 1, 2011. I further find that the tenants acted in a reasonably timely manner to recover the overpaid utilities from the landlord after receiving their bill. Therefore, I find the tenants are entitled to recover the overpayment utilities of \$208.50 from the landlord. The landlord is at liberty to pursue the former upper tenant for recovery of the other 60% of the bill pursuant to the terms of the tenancy agreement with the former upper tenant.

In light of the above, the tenants are provided a Monetary Order in the amount of \$258.50 including the filing fee to serve upon the landlord. Alternatively, the tenants are authorized to deduct \$258.50 from a subsequent month's rent in satisfaction of this award.

I have granted the tenants' request to cancel the Notice to End Tenancy, with the effect that the tenancy continues, for two reasons:

1. The landlord indicated that he does not want to evict the tenants; and,
2. I find that opening a hydro account, and demanding compensation from the landlord for the upper tenant's unpaid portion of hydro bill, does not form a basis to end the tenancy under the Act, regulation or tenancy agreement.

Conclusion

The Notice to End Tenancy for Cause is cancelled and the tenancy continues. The tenants have been provided a Monetary Order in the total amount of \$258.50. The tenants are authorized to deduct \$258.50 from a subsequent month's rent in satisfaction of the Monetary Order.

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: October 27, 2011.

Residential Tenancy Branch