



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, O

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy; for an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; and a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and the landlord.

During the hearing I ordered the tenants to provide a written explanation from their income assistance worker confirming ineligibility for shelter assistance. I gave the tenants until the end of business on January 31, 2012 to submit this information. While the tenants did submit this documentation, I found that it was not relevant to the issues before me and I have not considered in this decision.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to an order to have the landlord comply with the *Act*, regulation or tenancy agreement; and to a monetary order for compensation for damage or loss, pursuant to Sections 46, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on July 19, 2011 as a month to month tenancy for the monthly rent of \$1,150.00 and a security deposit of \$575.00 paid, but that no written tenancy agreement was prepared. While the tenants state that rent is due on the 1st of each month, they also state that the landlord believes that rent is due on income assistance cheque issue day.

The residential property is a house with two separate rental units; the main floor and the basement. These tenants live in the main floor. The tenants testified that they believe they are responsible for 60% of the utility charges (hydro and gas). The landlord testified these tenants are responsible for 50% of these utilities.

The tenant submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated January 03, 2012 with an effective vacancy date of January 13,

2012 citing the tenant failed to pay rent in the amount of \$1,160.00 due on January 3, 2012.

The tenants state that when they informed their income assistance worker that they did not have hydro or gas they lost their eligibility for shelter assistance and as a result failed to pay rent for January 2012. The landlord testified that the tenants have paid the rent in full.

The tenants testified that they have not had gas for heat and hot water since mid August 2011 and that hydro had been shut off in December 2011 but was reinstated, temporarily, until this matter can be resolved. The landlord refuses to have the utilities but in her name claiming it is the tenant's responsibility.

Because there is only one meter for the residential property the tenants have not put the utilities in their names because they don't want to be held responsible for the full utility charges should the tenant from the unit below not pay their fair share or if the unit is unoccupied and still using hydro.

Analysis

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

I accept that both parties agree that the tenant's are responsible for the payment of utility charges. I also accept that, by the landlord's testimony, these tenants are responsible for 50% of the charges for the residential property. However, it is clear that both parties have a different understanding of what was agreed upon in relation to hooking up the utilities.

Residential Policy Guideline #1 states that a term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found as unconscionable.

A term of a tenancy agreement is defined in Residential Tenancy Regulation Section 3 as unconscionable if the term is oppressive or grossly unfair to one party. I find that requiring one tenant to be held responsible for the payment of utility charges for another tenant by having the bills in the tenants' names, in this case the upstairs tenants responsible for the payments of utilities for the downstairs tenants, is grossly unfair to the upstairs tenants.

As such, I order the landlord to immediately have the hydro and gas utilities registered in the landlord's name and that she can collect from the tenants their portion of 50% of those charges for each billing period when she receives a bill from the utility provider.

During the hearing I ordered the landlord to call the utility providers immediately after the hearing had concluded and that if the landlord failed to do so the tenants should consider filing a new Application for Dispute Resolution seeking additional compensation.

I order, the landlord may not charge the tenant for any utility usage that may be billed to the landlord from the start of the tenancy until the date of this decision. I order the landlord is not entitled to change the amount of rent to facilitate any utility charges unless mutual agreed upon with the tenants and in writing.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I find that as a result of the landlord's failure to provide utility hook ups for the tenants from the start of the tenancy, the tenants have suffered a damage or loss that results from the landlord's violation of the *Act* and regulation.

The tenants' claim is for \$3,600.00 or \$600.00 per month or 52% of the value of the tenancy. I note that the utility the tenants have been without has been gas and therefore the tenants have not had any hot water or heat for the majority of the tenancy and as such, I find this a reasonable amount of compensation for the reduction in value of the tenancy.

Section 46 of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day *after* the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

As to the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on January 3, 2012 there is no tenancy agreement; there is disagreement when rent is due in the month and the landlord states on the 10 Day Notice that rent was due on January 3, 2012.

As such, I find the landlord issued the notice on the day that rent was due and therefore not the day *after* it was due as is required under Section 46. I therefore find the Notice issued by the landlord on January 3, 2012 to be ineffective.

Conclusion

For the reasons noted above, I find the tenants are entitled to cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on January 3, 2012 and that tenancy remains in full force and effect.

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$3,600.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 1, 2012.

Residential Tenancy Branch