



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, CNR, RP, PSF, RR

Introduction

This hearing dealt with an application by the tenant for more time to make an application, to cancel a notice to end tenancy for cause, to cancel a notice to end tenancy for unpaid rent, to order the landlord to make repairs to the unit, to order the landlord to provide services, to reduce rent for repairs and recovery of the filing fee.

The tenants participated in the conference call hearing but the landlord did not. The tenants presented evidence that the landlord was served with the application for dispute resolution and notice of hearing by registered mail. I found that the landlord had been properly served with notice of the tenant's claim and the date and time of the hearing and the hearing proceeded in their absence.

Preliminary Issue to be Decided

Matters related to this tenancy were heard February 21, 2012 under file 787419. In this hearing the landlord was successful in their application and was awarded an order of possession.

The tenants filed for a review of the February 21, 2012 decision. The review application was dismissed and the original decision and order dated February 21, 2012 upheld.

As the landlord has been granted an order of possession for the rental unit, I decline jurisdiction over the notice to end tenancy for cause.

The tenant's claim regarding the shared utilities will be heard.

Background and Evidence

This tenancy began October 1, 2011 with monthly rent of \$995.00 and the tenants paid a security deposit of \$500.00.

The tenants testified that when they entered into this tenancy they were advised that they would be responsible for paying their own hydro bill. The tenants stated that they had also been told by the landlord that each rental unit in the 4-plex had their own hot water tank.

When the tenants received their October 1, 2011 – December 1, 2011 hydro bill they were surprised to see a bill in the amount of \$239.50. The tenants stated that when the next hydro bill came in it was for \$338.90. Because the hydro bills were so high the tenants started to check whether or not the large hot water tank in their unit was in fact the hot water source for the upstairs rental unit.

The tenants shut the power off to the hot water tank and were able to confirm that the upstairs tenants had no hot water and were not connected to the hot water tank in the tenants unit that the tenants were paying hydro on. The tenants stated that the hot water tank in their rental unit supplies not only the rental units but also the shared laundry facilities.

The tenants stated that 3 adults and a small child occupy the upstairs rental unit and 2 adults and a 17 year old occupy their rental unit.

Analysis

Concerns related to the tenant's application to set aside the notice to end tenancy for cause have not been heard as matters related to ending this tenancy were heard February 21, 2012 under file 787419.

Residential Tenancy Branch Rules of **RULE 10 – INTRODUCTIONS AND PRELIMINARY MATTERS**

10.3 Preliminary matters: *Upon request, the Dispute Resolution Officer must consider any preliminary matters, including but not limited to questions of jurisdiction, substituted service, adjournment, adding a related matter, amending the application, and summoning a witness or document*

Based on the documentary evidence and undisputed testimony of the tenants, I find on a balance of probabilities that the tenants have met the burden of proving that they have grounds for entitlement to a monetary order for the overpayment of the utilities.

The *Act* is very clear when a tenant is required to put a utility bill in their name and share that utility with tenants who do not pay a portion of the bill. Taking into consideration the number of and age of the tenants in the upper and lower rental unit, I find it reasonable that the utility bills should be shared equally. The tenants have submitted 2 utility bills; one for \$239.50 and one for \$338.90 which total \$578.40. The tenants therefore are entitled to a monetary order for \$289.20 or ½ of the utility bills.

The tenants in future, will be responsible for paying ½ of the utility bills and if the other ½ is not paid by the upstairs tenants that amount may be deducted from future rent.

Residential Tenancy Policy Guideline **1. Landlord & Tenant – Responsibility for Residential Premises** speaks in part to:

Shared Utility Service:

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 unconscionable³ as defined in the Regulations.

If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

As the tenants have been successful in their application the tenants are entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenants have established a monetary claim for \$289.20 for overpayment of the utilities. The tenants are also entitled to recovery of the \$50.00 filing fee. I grant the tenants a monetary order under section 67 for the amount of **\$339.20**.

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 29, 2012

Residential Tenancy Branch