



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for a monetary order for \$1650.00. The applicant is also requesting recovery of his \$50.00 filing fee.

Background and Evidence

The applicant testified that:

- At the beginning of the tenancy he signed an agreement to pay 50% of the utilities in the rental unit, however at that time there was only a single woman and a baby living in the upper unit.
- He paid \$100.00 per month towards utilities except for a couple of months at the beginning of the tenancy when he paid a little bit less.
- In January of 2010 however the tenancy changed and from then on there were between three and five people living in the rental unit.
- He believes this increased his 50% share of the utility costs from approximately \$50.00 per month to over \$100.00 per month.
- He paid approximately \$3300.00 over the 33 months of the tenancy, and he is therefore requesting the return of 50% of that amount.

- The landlord still has not given him copies of all the utility bills for the term of his tenancy.

The respondent testified that:

- She has supplied two years of the utility bills, and you can see by the amount on those bills that 50% of the average monthly amount is approximately \$105.00.
- Therefore since the tenant only paid \$100.00 per month, he has not even been charged 50% of the utility costs.
- The tenant agreed to pay 50% of the utility costs, and there is nothing in the agreement that states that the costs will change if the number of tenants in the upper unit changes.
- The tenant is also incorrect on the number of people that were living upstairs when this tenancy began, at that time there was a woman and two teenage children living upstairs and they did not move out of the rental unit until April of 2011.
- The number of people living in the rental unit upstairs was approximately the same number for the majority of the tenancy and therefore the cost of the utilities would not have fluctuated significantly.

Analysis

It is my finding that the applicant has not met the burden of proving that he overpaid his share of the utilities during the term of the tenancy.

First of all although landlord has not supplied utility bills for a portion of the tenancy, the tenant has also failed to supply evidence of how much was paid towards utilities for a portion of the tenancy.

Secondly although the tenant claims that the number of tenants living above the rental unit increased significantly during the term of the tenancy, he has supplied no evidence in support of that claim and the landlord denies that there was any significant fluctuation in the number of people living in the upper unit. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met.

Thirdly although the tenant claims that he agreed to 50% of the utilities based on only one person and a baby living above him, there is nothing in the tenancy agreement that states that the amount of utilities would fluctuate with any change of the number of occupants in the upper suite.

Therefore it is my finding that the tenant is still liable for 50% of the utilities in his rental unit for the full term of the tenancy.

Although the landlord has not provided utility invoices for the first nine months of the rental, the average utility costs for the 24 following months was \$210.90, and therefore the tenants share would be \$105.45 and I find that it unlikely they would have been significantly different for the previous nine months.

Therefore since the tenant has not shown that there was any significant increase in the use of utilities from the rental unit above, it is my finding that the tenant has not overpaid his utilities.

Conclusion

This application for the return of alleged overpaid utilities is dismissed without 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: August 08, 2012.

Residential Tenancy Branch