



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, PSF, RR, AAT, FF

Introduction

This was an application by the tenant seeking a monetary order, an order to reduce rent, an order that the landlord provide services and facilities required by law and allow access to the unit for the tenant and his guests. The tenant was also seeking an order to force the landlord to comply with the Act or agreement by including utilities in the rent.

This was a face-to-face hearing and both the tenant and the respondent landlord appeared.

Issues(s) to be Decided

The tenant was seeking compensation for lack of services and an order that the landlord restore utilities in the monthly rental payment.

The issues to be determined are:

- Is there a term in the tenancy agreement to include cost of utilities in the rent?
- Should an order be granted to force the landlord to comply with the above term?
- Should the landlord be ordered to provide hydro services?
- Is the tenant entitled to compensation or rent abatement for no hydro services?

Preliminary Matter

At the outset of the hearing, the respondent identified as the "*landlord*" objected to being named as respondent/landlord in this tenancy dispute. According to this participant, he and the tenant were tenants-in-common who each paid the owner of the property separately under separate tenancy agreements. The position of the respondent was that the applicant/tenant should take up any disputes with the owner of the building.

The tenant stated that, although he did submit his rent of \$500.00 per month directly into the owner's account, this was done pursuant to a request to do so by the respondent landlord. The tenant testified that his tenancy agreement was only with the respondent and that is why only the respondent was named, not the building owner.

The building owner was called as a witness and confirmed that the only tenant he had a tenancy agreement with, was the respondent. The owner stated that, although the

occupants of the home each paid directly into his account, he did not have a tenancy agreement of any kind with the applicant/tenant. The owner testified that it was his understanding that his own tenant had rented portions of the home to others and was filling the landlord role with respect to these additional residents. The building owner further stated that his tenant, the respondent participating in the hearing, was responsible for paying the hydro under their tenancy agreement but had failed to do so and the owner is aware that the services have been cut off to the building. The owner stated that, if the hydro is not restored, he may take steps to end the tenancy.

In the Act, the definition of "**landlord**", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, (i) permits occupation of the rental unit under a tenancy agreement, or, (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) *a former landlord, when the context requires* (my emphasis)

In this instance I find that there was a verbal tenancy agreement between the applicant tenant and the respondent named in the application as landlord. Therefore I find that these two participants, are landlord and tenant under the Act.

Background and Evidence

The tenancy officially began on June 1 2012 with rent set at \$500.00 and no security deposit was paid. There was no written tenancy agreement. The tenant testified that, when he rented the unit, the landlord had verbally agreed to a rental rate of \$500.00 per month *including utilities*.

The tenant testified that the landlord evidently failed to pay the hydro bill and it was disconnected. The tenant testified that this created hardship for him and devalued the tenancy. The tenant is seeking compensation. Moreover, according to the tenant, the landlord began to demand additional funds from him for hydro and became belligerent when the tenant pointed out that utilities were supposedly included in his rent and the landlord then threatened to evict him.

The tenant testified that he gave the landlord a written notification objecting to no hydro and demanding compensation. The tenant advised the landlord that he would seek dispute resolution if the situation was not rectified.

The landlord denied that the inclusion of utilities was ever agreed-upon at the start of the tenancy. In fact, according to the landlord, there was a clear verbal understanding between the parties that each occupant would pay their own portion of the hydro.

The landlord testified that when he was not able to pay the hydro bill, the power had been cut off subject to reconnect charges and a deposit. However, he arranged for power from an adjacent building, owned by the same owner, to be diverted to the residence and this “replacement” electricity runs everything except the hot water tank.

The landlord does not agree that the tenant should be compensated. In fact, the landlord feels that he is owed money for utilities from the tenant.

Analysis

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are also enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*]. Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that

- (i) are required or prohibited under this Act, or
- (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

Section 13 of the Act requires that a landlord **prepare in writing** every tenancy agreement entered into and within 21 days thereafter, the landlord must give the tenant a copy of the agreement.

Each agreement must comply with the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;

(e) the address for service and telephone number of the landlord

(f) **the agreed terms in respect of the following:**

(vi) **which services and facilities are included in the rent;** (my emphasis)

Section 13 (3) requires that, within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

However, in cases where there is no written contract, oral terms contained in verbal tenancy agreements may still be recognized and enforced. Section 1 of the Act, defines “tenancy agreement” as follows:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Although oral terms are acceptable for enforcement, section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if ; (a) the term is inconsistent with this Act or the regulations, (b) the term is unconscionable, or (c) the term is **not expressed in a manner that clearly communicates the rights and obligations under it.** (My emphasis).

I find it follows that, verbal tenancy terms will become unclear if they are disputed by one of the two parties and , for this reason, cannot be enforced. In the case before me, I find that this impacts the verbally tenancy term, claimed by the landlord, that the tenant must pay a share of the utilities on top of the \$500.00 rent.

I find that the landlord had an obligation under the Act to create a tenancy agreement in writing. I find that, had the landlord followed the Act, the tenancy terms about what was or was not included in the rent would have been clarified and there would be no confusion caused by the disputed verbal terms relating to hydro costs.

In any case, a mediated discussion ensued and the parties were able to find a resolution to this dispute, resulting in the following agreement:

1. The landlord is ordered to restore the hydro utilities without delay. Should the hydro not be operating by Tuesday August 21, 2012, the tenant is at liberty to seek compensation through dispute resolution in the form of a rent abatement that will continue pending the restoration of hydro services.

2. The monthly rental rate for this tenancy is \$500.00 including all amenities such as water and the current level of cable services, except for hydro.
3. The tenant will be responsible to pay 1/3 of the hydro used, starting with the period immediately following the hydro reconnection on August 21, 2012 and payable upon the first invoice being received thereafter.
4. For each billing period, the tenant must pay his portion of the hydro upon being given a copy of the actual hydro invoice from the utility company.
5. The landlord will issue a receipt for each payment received from the tenant.
6. The tenant is not responsible to pay any share of the hydro arrears to date, reconnection charges, nor the hydro deposit required by the utility company. The landlord will be solely responsible for these costs.

Conclusion

I hereby order the landlord to restore the hydro services to the rental unit forthwith. This order must be served on the landlord.

I hereby order that the rent is \$500.00 per month plus one-third of the hydro costs and monthly rental rate includes cable and other utilities and services.

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 15, 2012.

Residential Tenancy Branch