



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OLC; FF; O

Introduction

This is the Tenants' application for an Order that the Landlord comply with the Act, Regulation or tenancy agreement; to recover the cost of the filing fee from the Landlord; and "other".

The parties gave affirmed testimony at the Hearing.

It was determined that the Notice of Hearing documents and copies of the Tenants' documentary evidence were mailed to the Landlord, by registered mail, on April 3, 2013. It was also determined that the Landlord mailed copies of her documentary evidence, by registered mail, to the Tenants on April 18, 2013.

Preliminary Matters

At the outset of the Hearing, the parties acknowledged that they wished to have a ruling on a term of the tenancy agreement. The Tenants also clarified that they wished to recover the cost of serving the Landlord with documents because, in their view, their Application would not have been necessary if the Landlord had complied with the terms of the tenancy agreement.

Issues to be Decided

- How much is monthly rent and the amount of utilities payable by the Tenants per month?
- Are the Tenants entitled to compensation for the cost of serving the Landlord with documents?

Background and Evidence

The rental unit is one of two suites in the rental property. The Tenants live in the upper suite and another occupant lives in the lower suite.

A copy of the tenancy agreement was provided in evidence. The Tenants stated that the parties are in dispute with respect to the term in the tenancy agreement that deals

with rent and utilities. The Tenants submitted that monthly rent is \$1,185.00, which includes \$85.00 for their share of hydro. The Tenants provided copies of their rent receipts in evidence.

The Tenants testified that the Landlord was attempting to get the Tenants to pay more for hydro, and that they had offered to negotiate a new tenancy agreement with the Landlord. They stated that they received a 10 Day Notice to End Tenancy for unpaid utilities on April 23, 2013, which is what they were trying to avoid by bringing on this application for clarification of that term of the tenancy agreement.

The Tenants stated that they have purchased a home and that they will be moving out of the rental unit. The Tenants stated that they would be providing the Landlord written notice to end the tenancy and asked the Landlord if they could move out on July 1, 2013, rather than June 30, 2013.

The Landlord stated that monthly rent is \$1,100.00 and that the Tenants were responsible for paying 60% of the hydro bill. She said that \$85.00 is not enough to cover the Tenant's portion of the hydro. The Landlord provided copies of hydro bills in evidence.

The Landlord agreed that the Tenants could move out on July 1, 2013, provided they gave proper written notice and provided they were out by 12:00 noon.

Analysis

The introductory paragraph of the tenancy agreement states the following:

“[The Tenants] (Tenant(s) herein rent through [the Landlord] (Owner) the premises located at [rental property] for a monthly rent of \$1,100.00 plus \$85.00 hydro monthly costs due and payable on or before the first of every month. This agreement becomes effective the 1st day of May, 2012.”

The tenancy agreement continues to list various terms including term 5, which states:

“5. Utilities ie: cable, internet and phone are responsibility of tenant. \$85.00 per month paid towards hydro costs which is 60% for upper tenants. (as agreed upon between owner and tenants)”

Section 12(1)(d) of the Residential Tenancy Regulation requires a landlord to ensure that a tenancy agreement is written so as to be easily read and understood by a reasonable person. I find that term 5 as written is vague and lacks specificity. It

appears to contradict the provisions of the introductory paragraph. Therefore **I find that term 5 is not clear or easily understood, and is unenforceable.**

Therefore, I find that rent is \$1,185.00 per month and that rent includes hydro.

It is important to note that the Notice to End Tenancy issued April 20, 2013, alleges that the Tenants are in arrears for unpaid utilities (hydro). I have found that rent is \$1,185.00 and includes hydro. The Tenants provided copies of their receipts which indicate that the Tenants are not in arrears. Therefore, I find that the Notice is not a valid notice to end the tenancy.

The Tenants seek to recover the cost of serving the Landlord with documents; however, there is no provision in the Act for recovery of these costs.

I find that the Tenants are entitled to recover the cost of the \$50.00 filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, **the Tenants may deduct \$50.00 from future rent due to the Landlord.** The Tenants indicated that they have already provided the Landlord with payment for May rent. Therefore **rent for the month of June, 2013, will be \$1,135.00.**

Conclusion

I find that rent is \$1,185.00 per month and that rent includes hydro. I further find that the Notice to End Tenancy for Unpaid Utilities issued April 20, 2013, is not a valid notice.

The Tenants are entitled to recover the cost of the \$50.00 filing fee from the Landlord and to deduct that amount from rent due to the Landlord. Therefore **rent for the month of June, 2013, will be \$1,135.00.**

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: April 26, 2013

Residential Tenancy Branch

