Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

OLC, PSF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant who had questions about the impact of the landlord's actions in imposing a new utility charge that had never been requested in the past.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Are the new utility charges imposed by the landlord compliant with the Act or tenancy agreement?

Background and Evidence

The tenancy originally began approximately 4 years ago and after completion of several fixed term tenancies, the parties entered into the most recent tenancy agreement, which is a month-to-month tenancy starting May 1, 2013.

Rent is $800.00, plus 40% of the cost of utilities, to be paid to the landlord. A copy of the written tenancy agreement is in evidence.

The tenant testified that her previous tenancies only required that she pay a portion of the hydro. According to the tenant, she was also only being charged for hydro since entering into this month-to-month agreement.

The tenant testified that on June 10, 2013, she suddenly received a notification from the landlord advising her that, as of October 1, 2013, she would be required to pay for her share of municipal water and sewer charges, in addition to the hydro utilities.

The tenant pointed out that, under provisions in the Residential Tenancy Act, a landlord is normally required to give the tenant 30 days written notice and also reduce the rent, when a service or facility that had previously been included in the rent is going to be restricted or eliminated.

The landlord testified that, although the tenant has not been charged for municipal water to date, the written tenancy agreement that they signed lists what is included in the rent in paragraph 3. According to the landlord the contract clearly indicates that the tenant is responsible to pay a 40% share of the water bills as well as the hydro.

Analysis

Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement.

Section 58 of the Act also states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement.* (My emphasis)

On the question of whether or not the landlord has the right to impose utility charges under the Act, the Act makes reference to the agreed-upon terms of the tenancy agreement.

I find that the written agreement between these parties, beginning on May 1, 2013, does contain detailed terms with respect to the payment of utilities. In fact the agreement confirms that, the tenant is responsible to pay for her share of water, sewer charges and hydro utilities.

I find that the landlord's failure to demand payment to date, does not nullify the existing tenancy terms regarding utility payments. I accept the landlord's assurances that they do not intend to correct their oversight in this regard by attempting to impose retro-active charges for past invoices, but require that the tenant must start paying for water usage after October 1, 2013.

In regard to the tenant's query about whether the landlord must comply with the Act by compensating the tenant for restricting facilities that had previously been included in the rent, I find that section 27 of the Act states that a service or facility, other than an

essential or material one, may be restricted or terminated, provided that the landlord (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and (b) reduces the rent in an amount that is equivalent to the reduction in value.

However, I find that section 27 of the Act is not applicable to this situation because the communication from the landlord in this case is not notifying the tenant that they will be changing the tenancy terms of the agreement by restricting an existing service or facility. I find that the landlord is merely advising the tenant that they intend to start complying with the utility terms in the tenancy agreement and that the tenant must also be prepared to comply with the terms.

In consideration of the above, I find that no specific order is required with respect to the dispute before me at this time. However, either party has a right to make a future application for dispute resolution with regard to this, or any other, tenancy matter.

Based on the evidence and testimony before me, I find that the landlord did not contravene the Act or agreement by issuing a notification to advise the tenant that the tenant must follow the tenancy agreement by paying her share of the agreed-upon utilities in future.

Conclusion

The tenant's request for clarification of the terms in the tenancy agreement and responsibilities under the Act has been resolved and it is determined that issuing an order is not necessary.

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: October 17, 2013

Residential Tenancy Branch