



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking emergency repairs and an order determining the tenant's proportion of utilities.

The hearing was conducted via teleconference and was attended by the tenant, the landlord and his agent.

At the outset of the hearing the tenant submitted that there is no longer a need for an order to have the heating system repaired. As such, I amend the tenant's Application to exclude the matter of emergency repairs.

From the evidence and testimony submitted I note that some of the heating problems may have been related to a difficult relationship between the former upstairs tenants and this tenant and that the utilities were in the name of the upstairs tenant. However at the time of the hearing the landlord confirmed utilities are now in the landlord's name and the landlord will manage the accounts.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a reduce percentage of responsibility for utility charges and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on May 1, 2013 as a month to month tenancy for the monthly rent of \$1,300.00 due on the 1st of each month with a security deposit of \$650.00 paid.

The tenant submits that there was no determination prior to the start of the tenancy regarding utilities and it was not until September when the landlord's agent indicated to the tenant that she owed 50% of the utility costs. The landlord submits that the utilities were split 50/50 with the upstairs tenants.

During the hearing the landlord offered to alter the arrangement to a 60/40 split with the tenant responsible for 40% of the utility costs.

The tenant seeks a split of 70/30 with the tenant responsibly for 30% of the charges. The tenant submits that it should be this amount because she has no dishwasher; she does not have control over the heat and her household is 2 adults and 2 children. The only information provided about the upstairs unit is that the household is 1 adult and 3 children.

Analysis

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

As per the testimony of both parties the terms related to utility responsibility are not agreed upon and as such they have asked that I determine a fair amount for her responsibility.

In the absence of any data to determine specifically all appliances, electronic and electrical devices used by both tenants and the specific usage on a monthly basis of both rental units I find there is insufficient evidence to determine an accurate empirical percentage of responsibility.

As such, I find that either proposal (70/30 or 60/40) might be considered as relatively reasonable however as there are 4 people living in both units I find the only reliable measure is that of comparable usage and therefore I order that this tenant be held responsible for 40 % of the utilities.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment in satisfaction of this claim, pursuant to Section 72(2)(a).

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: January 15, 2014

Residential Tenancy Branch

