



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order to recover addition payments for utilities and to recover the cost of the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issues to be Decided

Is the tenant entitled to a monetary order to recover additional payment of utilities?
Is the tenant entitled to recover the cost of the filing fee from the landlord?

Background and Evidence

The parties entered into a fixed term tenancy agreement which began on June 1, 2013, and ends on January 31, 2014. Rent in the amount of \$2,400.00 was payable on the first day of each month. A security deposit of \$1,200.00 was paid by the tenant.

The tenant testified that the premises consist of two units. The tenant stated included in his rent is 40% of the utilities, such as gas, electricity, water/sewer and cablevision is fully included. File in evidence is a copy of the tenancy agreement.

The tenant testified that the landlord seeks for him to pay the balance of the utilities bills which are over the 40% included in the rent. The tenant stated that would mean that his unit is responsible to cover 100% of all the utilities for the shared residence.

The tenant testified that he believed the agreement meant that his unit is responsible for 40% of the cost of the joint utilities and those are included in the rent and the other unit

would be responsible for the balance of 60%. The tenant stated it would be unfair that they would be required to pay for utilities that are used by another residence.

The tenant testified that as the tenancy agreement was unclear, the landlord had provided him with a new tenancy agreement which indicated that the tenant is responsible to pay \$2,400.00 in rent, and included in the rent, was 60% of the shared utilities. The tenant stated that new agreement also stated that he would be responsible to pay an additional 40% of the shared utilities. The tenant stated that still makes his unit responsible for 100% of all the utilities for the shared residence and he refused to sign the new agreement. The tenant stated that he paid the additional charges under duress and seeks to recover the overpayment of utilities.

The tenant acknowledged they are responsible for their personal long distance charges and any movies they rent.

The landlord testified that the property management company has made the issue of utilities confusing as the original agreement should have indicated that no utilities were included in rent and that the tenant was required to pay 40% as she pays the balance of 60% as she lives in the other unit. The landlord stated the property management tried to fix their error by asking the tenant to sign a new agreement, although that agreement also seems unclear.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Under section 6(3) (c) of the Residential Tenancy Act, a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the right and obligations under it.

While I accept the landlord's evidence that the agreement was supposed to read that the tenant would pay 40% of those shared utilities, I find that is not how their property management company wrote the agreement as it clearly indicates 40% of the shared utilities and cablevision is included in the rent. There was no term in the agreement that the tenant would be responsible for any additional cost. I find the tenant had the right to rely on the written contract which was that his portion of the utilities was included in the rent.

Therefore, I find the tenant is entitled to recover the overpayment of utilities, however, as the amount claimed by the tenant included long distance charges which the tenant acknowledged they are responsible to pay, the amount of \$21.73, has been deducted from the total amount claim. Therefore, I find the tenant is entitled to recover the over payment of utilities in the amount of **\$197.58**

I find that the tenant has established a total monetary claim of **\$247.58** comprised of the above described amount and the \$50.00 fee paid for this application.

Should the landlord fail to pay this amount, this Order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The tenant is granted a monetary order in the above amount.

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: December 23, 2013

Residential Tenancy Branch

