



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC and FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord and the Tenant agree that both Landlords were served with the Application for Dispute Resolution and Notice of Hearing, by registered mail. The female Landlord stated that she is representing both Respondents at this hearing.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

With the consent of both parties, the Application for Dispute Resolution was amended to reflect the legal name of the female Landlord, as was provided at the hearing.

Issue(s) to be Decided:

Is there a need to issue an Order requiring the Landlord to comply with the *Act* or the tenancy agreement?

Background and Evidence:

The Landlord and the Tenant agree that the parties entered into a written tenancy agreement for a fixed term, which began on January 01, 2014 and is to end on May 31, 2015, at which point it will revert to a month-to-month tenancy. The tenancy agreement indicates that the monthly rent is \$1,765.00 per month and that electricity and heat is not included in the rent.

The Tenant stated that when she signed the tenancy agreement she understood that she would have to pay for hydro and gas consumed in her portion of the residential complex. The Tenant stated that the parties did not discuss how the hydro/gas would be paid; that she understood there were two units in the residential complex; that she assumed the utility expenses would be shared between the two units in a fair manner; and that she did not realize there was a single meter for gas and a single meter for hydro until December 31, 2013, when she was making arrangements to set up utility accounts.

The Landlord stated that it was the Landlord's understanding that the Tenant would pay the hydro and gas for the entire residential complex, including hydro and gas consumed by the occupants of the lower suite. She stated that the rent for the rental unit is significantly lower than market rent for a unit of this nature/location, which was intended to compensate the Tenant for the hydro/gas consumed by the lower suite. The Landlord acknowledged that prior to the start of the Tenant was not advised that she would be responsible for the hydro and gas charges for the entire residential complex.

The Landlord stated that prior to the start of this tenancy she showed the Tenant a list outlining the average utility costs. The list, which was submitted in evidence, indicates the average monthly utility costs are approximately \$235.00. The Tenant stated that she does not recall being shown a list, but she does recall the Landlord telling her the average costs would be approximately \$150.00, which she assumed referred to the average costs for her unit.

The Landlord and the Tenant agree that this residential complex has two rental units; that the upper rental unit has three bedrooms; that the lower rental unit has one bedroom and a room that could be used as a den or bedroom; that the lower unit is currently occupied by one adult and one child of approximately ten years; and that the upper unit is currently occupied by the Tenant and one adult.

The Landlord stated that the lower suite is not occupied during the day, as the adult works full-time and the child attends school. She stated that the upper unit is occupied by one adult during the day, as one of the occupants does not work. The Tenant stated that she works full-time and the other occupant works 20 hours per week.

The Tenant argued that the lower suite is an above-ground basement suite and is likely more damp and harder to heat. The Landlord argued that the lower suite has new walls, new floors, is well insulated, and does not cost an excessive amount to heat.

The Landlord stated that she believes the upper rental unit is approximately 2,000 square feet in size and the lower unit is 586 square feet. The Landlord stated that these estimates are based on the information provided to the Landlord by the realtor when the residential complex was purchased.

The Tenant stated that she believes the upper rental unit is approximately 1,500 square feet in size and the lower unit is between 700 and 800 square feet. The Tenant stated that she based these estimates on measurements she took of the exterior of the house.

The Landlord stated that the bedroom and den in the lower unit are heated by electric heaters and the remainder of the unit is heated by a gas stove. The Tenant does not dispute this testimony.

The Landlord and the Tenant agree that the rental unit is primarily heated by gas, with the exception of the upper loft area, which is approximately 500 square feet. The parties agree that the loft is equipped with a non-functioning baseboard heater.

The Landlord stated that the Tenant is using a space heater to heat this area. The Tenant stated that her father did purchase a space heater for her but she returned it to the store; that she is using this area as a bedroom; and that she is not heating the loft area. The Tenant argues that the loft should not be considered when considering utility sharing costs, as the area is not heated.

Although it was not discussed at the hearing, the Landlord submitted written documentation that indicates the laundry room of the rental unit, which is approximately 100 square feet, is not heated.

The Tenant argued that it is unfair to allocate the cost of utilities solely on the basis of square footage, as she carefully monitors her energy consumption in an attempt to minimize costs. Alternatively, she argued that utilities are included in the cost of the rent for the lower suite so that occupant may be less inclined to reduce costs.

The Landlord stated that the Landlord is willing to pay 30% of the gas and hydro charges at the residential complex if the Tenant pays 70% of the costs. The Tenant stated that she thinks that each party should pay 50% of the costs.

Analysis:

I find that the testimony provided by both parties in this matter was consistent and forthright, and I can find no reason to disregard the testimony of either party.

While I accept the Landlord's testimony that the rent was based on the Landlord's

understanding that the Tenant would pay for hydro and gas charges for the entire residential complex, the undisputed evidence is that this arrangement was not discussed with the Tenant prior to the start of the tenancy. As the Tenant did not agree with this cost sharing arrangement, the Tenant is not obligated to pay the utility charges for the entire residential complex.

Section 6(3) of the *Act* stipulates that a term of a tenancy agreement is unenforceable if the term is unconscionable. Residential Tenancy Branch policy guidelines suggest that a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party and that a term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable. I fully concur with these policy guidelines and I therefore find that the Tenant is not obligated to open a hydro or gas account. The Landlord must make appropriate arrangements to have these services provided.

In my view, it is entirely unfair for one tenant to pay for the energy consumption of a third party in a separate suite, when the tenant has no control or influence over the amount of energy consumed by the third party. Even if the Tenant had agreed to pay the utility charges for the entire rental unit, it is quite likely that I would have determined this term was unenforceable.

On the basis of the testimony of the Tenant and the tenancy agreement that was submitted in evidence, I find that the Tenant is obligated to pay for hydro and gas consumed in the rental unit during her tenancy.

Section 62(3) of the *Act* authorizes me to make any order necessary to give effect to the rights and obligations of a landlord and a tenant. As the Landlord has the right to be compensated for hydro/gas used in the rental unit and the Tenant has the obligation to pay these costs, I find that I have authority to determine how the gas and hydro costs of the rental unit are to be paid.

I favour the testimony of the Landlord over the testimony of the Tenant in regard to the size of the units in the residential complex, because the Tenant based her testimony on measurements taken of the exterior of the home and the Landlord based her testimony on information provided to her by a realtor. I find, on the balance of probabilities, that the information provided by the realtor is most accurate. I therefore find that the lower suite is approximately 586 square feet and this rental unit is approximately 2,000 square feet.

On the basis of the written documentation submitted by the Landlord and in the absence of evidence to the contrary, I find that the laundry room is unheated and is approximately 100 square feet in size. As heating generally accounts for the largest percentage of utility costs, I find it reasonable to exclude this space when determining how the utility costs should be shared, given that it is not uncommon for people to leave a laundry area unheated. I will, for the purpose of my calculations, therefore consider

the rental unit to be 1,900 square feet.

On the basis of square footage alone, I find that the Tenant should pay 1900/2586 of the gas and hydro expenses incurred at the rental unit, which is 73.5%.

Even if I were to accept the Tenant's testimony that she is not currently heating the loft area that she is using as a bedroom, I find that it is entirely possible that she may elect to heat this area in the future. I based this conclusion, in part, on the fact that it is being used as a bedroom, which people generally do heat in cold weather. I therefore will consider this area when calculating cost sharing of utilities.

As both of the suites in the residential complex are occupied by two people, I will not consider the number of occupants when calculating cost sharing of utilities. I will also not consider the daily routines of the occupants, as routines can fluctuate when a party loses a job, starts a new job, or when school is out for the summer months.

In the absence of evidence that corroborates the Tenant's belief that the lower suite consumes more energy to heat or that refutes the Landlord's belief that the lower suite does not cost an excessive amount to heat, I will not consider this variable when calculating cost sharing of utilities.

I concur with the Tenant's submission that a person who has utilities included in the rent is less likely to conserve energy. As the occupant of the lower suite is not required to pay hydro and gas costs, I find it entirely possible that he will consume more energy than he would if he were paying those costs. While it is impossible to know how the lower occupant's energy consumption will impact costs, I find it reasonable to reduce the Tenant's portion of the utility charges by 15% in compensation for this unknown variable. I therefore find that the Tenant must pay 58.5% of the gas and hydro costs for the residential complex.

I am always extremely hesitant to clarify a term of a tenancy agreement in circumstances such as these, where the parties have simply neglected to consider the matter. In these circumstances, however, I find that it is necessary to clarify this term, to ensure that the Tenant meets her obligation to pay for energy consumed, without paying for energy consumed by a third party. As the parties have not agreed to the specifics of this term, I am providing the parties with remedies.

In the event the Tenant does not agree with my conclusion that she should pay 58.5% of the hydro and gas costs, I find that she may end the fixed term tenancy prematurely. In the event the Tenant wishes to end the fixed term tenancy prematurely, I find that she must do so by giving written notice to the Landlord, no later than February 28, 2014, in which she gives notice to end the tenancy on March 30, 2014. If the Tenant does not end the tenancy by March 30, 2014, with written notice, the Tenant is obligated to continue this tenancy in accordance with the agreement.

In providing the Tenant with the remedy to end the tenancy prematurely, I was

influenced, in part, by the fact that the Landlord has previously indicated a willingness to enter into a mutual agreement to end the tenancy.

In the event that the Landlord does not agree with my conclusion that the Landlord should pay 41.5% of the hydro and gas costs, I find that the Landlord may install an additional gas meter and an additional hydro meter, which calculate the gas/hydro consumption of each unit. In the event individual meters are installed, I find that the Tenant will then be responsible for her own consumption.

I find that this hearing was necessary to clarify a term in the tenancy agreement. As the Landlord is responsible for outlining the terms of the tenancy agreement, I find that the Landlord must compensate the Tenant for the cost of filing this Application for Dispute Resolution.

Conclusion:

I authorize the Tenant to reduce one monthly rent payment by \$50.00, in compensation for the cost of filing this Application for Dispute Resolution.

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 31, 2014

Residential Tenancy Branch

