



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, RP, RR, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; a monetary order; an order to make repairs; and an order to reduce rent until repairs are made.

The hearing was conducted via teleconference and was attended by both tenants; the landlords and their agents.

During the hearing, the landlords did not verbally request an order of possession should the tenant be unsuccessful in the portion of her Application seeking to cancel the notice to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; to a monetary order for compensation for a utilities overpayment; to an order to have the landlord make repairs and to reduce rent until those repairs are made and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 46, 65, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties provided a copy of a document entitled Tenancy and Rental Agreement signed only by the landlord that states the tenancy began on July 1, 2013 for a monthly rent of \$900.00. There is no due date noted in the "agreement" for rent. The "agreement" states that utilities are not included in the above noted rent amount.

Clause 3 of the "agreement" states: "Lower tenant's agreement to share the monthly Hydro and Gas payments, upon receipt of the bills, or as per your agreement with the upper tenants." There are no clauses in the "agreement" that stipulate that utilities must be paid to the landlord.

The parties note that the tenants had been paying their utility charges to the landlord in recent months but as of December 2013 the tenant stopped paying any utility amounts. The tenant submits that the upstairs occupant refuses to give her copies of the utility bills and she believes that she has been paying double the amount of the actual costs and as such she has stopped paying utilities.

The tenant seeks compensation in the amount of \$293.00 based on 6 months of payments at \$97.80 divided by 2. The tenant believes the upstairs occupants pay their utilities every 2 months but collects from the tenant monthly. The tenant submits the upstairs occupants refuse to provide copies of the utility bills.

The upstairs occupants testified that they will not give the tenant copies of the utility bills because it is an invasion of their privacy and the bills contain personal information. The upstairs occupants stated they have offered to show the tenant copies of utility bills but she refuses.

The tenant submits she had requested repairs to the fireplace that the landlord has not yet made. The landlord submits that the tenant was informed that they had arranged for someone to come and look at the fireplace but that she refused entry to the landlord as he failed to give her notice in accordance with the *Act*. The tenant submits that she seeks the repairs be made by someone who is currently certified to make them.

The parties also provide evidence and testimony regarding the tenant's guests attending the rental unit. The tenant submits that the landlord continues to bother her about her brother's visits to the rental property. The tenant submitted into evidence a copy of a letter from the landlord to her dated September 22, 2013.

The letter states, in part, "I was advised that he can indeed visit you, however, you are to be present – that constitutes a visit – that you are letting him in for the purpose of visiting you while you are on the premises. This does not authorize him to stay all day long, without your presence and does not allow him to use the electricity, as you did indicate to me that he comes over to use your computer. He is not a tenant and should not have access to the utilities."

The tenant also seeks a separate mailbox for her own mail. The landlord submits he is not prepared to provide a separate mailbox.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 45(6) states that if a tenancy agreement requires the tenant to pay utility charges to the landlord and the utility charges are unpaid rent more than 30 days after

the tenant is given a written demand for payment of them the landlord may treat the unpaid utility charges as unpaid rent and may give notice under Section 46.

In the case before, I find there is no requirement in the tenancy agreement for the tenant to pay the landlord utilities. Rather the utilities are to be paid to the upstairs occupants. In addition from the testimony of the upstairs occupants I find they demanded payment of utilities on December 16, 2013 and issued the 10 Day Notice on January 2, 2014 – only 16 days after the demand letter.

For these reasons, I find the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued by the landlord on January 2, 2014 to be invalid and I hereby cancel the Notice. I also note that because there is no clause in the tenancy agreement requiring the tenant to pay the utilities to the landlord, the landlord cannot, in future, use this reason to end the tenancy.

In relation to the utility charges, I find that a tenant can only be held responsible for utilities that are in accordance with any agreement she has with the landlord and/or the upstairs occupants and for **actual usage**. As such, I find it is imperative that the tenant be provided with copies of all utility bills prior to requesting payment. I order that it is required that landlord ensure that the tenant be provided with copies of these bills that she can keep.

If the upstairs occupants feel there is personal information on the bills that they want redacted they may do so, however, they must not remove any information that would raise questions as to the usage or amounts owed to the upstairs occupants. That is to say all utility bills should provide all financial information about the account; all usage recordings; and service location information.

As to the compensation sought by the tenant for an overpayment of utilities, I find that by the upstairs occupants' failure to provide the tenant with copies of the utility usage and charges since the start of the tenancy she has been prejudiced in bringing her claim forward.

As such, I order the landlord to ensure that the tenant is provided with copies of utility bills the upstairs tenants have charged to the tenant for since the start of the tenancy, no later than February 28, 2014. And as at this time the tenant cannot provide evidence about any possible overpayment due to the upstairs occupants' failure to provide bills I dismiss the tenant's Application for this compensation with leave to reapply once she has received copies of all utilities bills from the start of the tenancy, if she believes there is still a discrepancy.

Section 32(1) of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

In relation to the tenant's application for an order to have the landlord complete repairs, I find based on the evidence before me that there are no outstanding repairs other than the fireplace. I order that until such time as the tenant allows the landlord access to make the repairs she is preventing the landlord from doing so and I will not grant her an order to force the repairs when the landlord is willing.

Section 29 of the *Act* states a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- a) The tenant gives permission at the time of the entry or not more than 30 days before the entry;
- b) At least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the purpose for entering and the date and time of the entry;
- c) The landlord provides housekeeping or related services under the tenancy agreement and the entry is required for those purposes;
- d) The landlord has an order of the director authorizing the entry;
- e) The tenant has abandoned the rental unit;
- f) An emergency exists and the entry is necessary to protect life or property.

While generally required to provide the tenant with a 24 hour written notice to enter the rental unit the *Act* also allows the tenant to give permission to the landlord to enter the rental unit. I find that a tenant who withholds their consent for letting a landlord enter the rental unit to make repairs that they have request is an unreasonable restriction on the part of the tenant.

I find it is unreasonable for a tenant to request a repair; refuse the landlord entry; then seek an order to have the landlord complete that repair and to have rent reduced until the repairs is made when they had been willing to make the repair in the first place. I dismiss this portion of the tenant's Application.

Further, I see no requirement under the *Act* that would allow me to order the landlord to use specific trades people. If there are any specific laws restricting who can work on a fireplace I could make such an order, however, no law has been provided into evidence. I dismiss this portion of the tenant's Application.

I also find that there is nothing in the *Act* that allows me to order the landlord to provide the tenant with a mailbox that is separate from a shared box and I dismiss this portion of the tenant's Application.

Conclusion

Based on the above, I order the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on January 2, 2014 to be cancelled and the tenancy remains in full force and effect.

As noted above, I order the landlord to ensure the tenant receives copies of all previous and current utility bills and all bills from the start of the tenancy no later than February 28, 2014.

Also as noted above, I dismiss all other portions of the tenant's Application.

However, I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$25.00** comprised of a portion of \$50.00 fee paid by the tenant for this application as she was only partially successful. I order the tenant may deduct this from a future rent payment 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: February 03, 2014

Residential Tenancy Branch

