Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, RR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. At the commencement of the hearing, I amended the tenant's application to reflect the corrected spelling of the landlord's name, provided by the landlord.

The tenant confirmed that she received the landlord's 10 Day Notice posted on her door on April 24, 2014. In accordance with sections 88 and 90 of the *Act*, the tenant was deemed served with this Notice on April 27, 2014, the third day after its posting.

The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package sent by the tenant by email and posted on her door. Although neither of these methods of serving a notice for dispute resolution comply with the special rules established under section 89(1) of the *Act* for serving this type of document, I am satisfied that the landlord has received the tenant's dispute resolution hearing package and written evidence packages and was prepared to proceed with this hearing.

The landlord testified that she did not send the tenant a copy of the written evidence she provided to the Residential Tenancy Branch (the RTB). She incorrectly understood that the RTB was responsible for forwarding this evidence to the tenant. I noted that the first item in the General Information contained in the Notice of a Dispute Resolution Hearing she received stated that she was responsible for providing both the tenant and the RTB with copies of any written evidence she wished to have considered. Since the landlord did not serve the tenant with copies of her written evidence, I advised both parties that I would not be considering the landlord's written evidence. I noted that with the exception of a short one-page summary of her position regarding the tenant's application, the other documents included in the landlord's written evidence had already been provided by the tenant as part of her written evidence package.

At the beginning of this hearing, both parties agreed that the issue of non-payment of rent has been resolved and this tenancy ended on May 31, 2014. The tenant withdrew her application to cancel the 10 Day Notice. The tenant's application to cancel the 10 Day Notice is withdrawn.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses or damages arising out of this tenancy? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover her filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, e-mails, documents, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant entered into written evidence a copy of a standardly worded, four-page Contract of Purchase and Sale (the Contract), as well as a one-page Addendum (the Addendum) to that Contract. Both of these documents signed by the landlord and the tenant were dated May 9, 2013. The tenant gave undisputed sworn testimony that the landlord's real estate agent initially drafted both documents, but the tenant's real estate agent made revisions to these documents, as did the parties.

The tenant had been the owner of this property and had been living in the single family home on this property for some time prior to the closing date for this real estate transaction. On that date, ownership of the property transferred from the tenant to the landlord. However, as was noted in the following portion of the Addendum, the landlord/Buyer agreed to rent the property back to the tenant/Seller until May 31, 2014:

> *...The Buyer agrees to rent the property back to the Seller for a monthly rent of $3000/month until May 31, 2014. A damage deposit of $1,750 and posted dated rent cheques are due upon the Possession Date. Seller reserves the right to terminate the tenancy with one calendar month's written notice. It is agreed and understood that the Seller will remove any debris from the property and leave the home in clean condition*...

The parties agreed that the Addendum prepared in conjunction with the Contract as outlined above constituted the only signed written agreement they had for this tenancy. Monthly rent was set at $3,000.00, payable in advance on the 15th of each month. The parties agreed that the landlord has recently returned the tenant's $1,750.00 security deposit paid when this tenancy began.

The tenant maintained that the following Adjustments provision of the Contract made the landlord responsible for the payment of heat and hydro for this property:

> ***6. ADJUSTMENTS****: The Buyer will assume and pay all taxes, rates, local improvement assessments, fuel utilities and other charges from, and including, the date set for adjustments, and all adjustments both incoming and outgoing of whatsoever nature will be made as of June 15. Yr. 2013 (Adjustment Date)...*

The tenant alleged that the above provision rendered the landlord responsible for the payment of all utilities, including heat and hydro, after the landlord assumed ownership of the property on June 15, 2013. The tenant testified that the tenant and her husband understood that the landlord was responsible for the payment of heat and hydro during the tenancy which took effect on June 15, 2013, when her status changed from the owner of the property to a renter. The tenant testified that the utility accounts with the gas company and the hydro company remained in her name. However, she said that both she and her husband contacted the landlord a number of times directly and through emails to advise the landlord that the tenant considered heat and hydro to be the responsibility of the landlord for this tenancy. The first of these emails was sent by the tenant's husband to the landlord on July 9, 2013. As the tenant and her husband maintained at that time that the terms of the Contract required the landlord to provide utilities to the tenant as part of the monthly rent, the tenant's husband outlined the following process the tenant planned to follow:

> *...In the meantime, given we are back to the terms of the Contract, as noted above, we will simply track the costs for all utilities as we incur them and obtain reimbursement for you at a later date...*

Although the tenant's husband periodically contacted the landlord during this tenancy to remind the landlord of their assertion that the landlord remained responsible for the tenant's escalating hydro and gas payments, the tenant kept these accounts under her name. The parties agreed that the landlord did prepare a standard Residential Tenancy Agreement (the Draft Agreement) for the tenant's signature, but the tenant refused to sign this Agreement because it did not indicate that heat and hydro were included in the monthly rent. They did not apply to recover these expenditures until they arbitrarily decided to withhold paying rent in order to obtain credit for the hydro and gas bills they had been paying under protest. Little more than a month before this tenancy was scheduled to end, the tenant applied for a monetary award to recover her hydro and gas costs incurred since the date when her possession of the home changed from that of an owner to that of the sole tenant.

At the hearing, the tenant reduced the amount of her requested monetary award from $2,000.00 to $1,861.56 to reflect the actual costs of heat and hydro she incurred or anticipated incurring for this now completed tenancy. The tenant also entered late written evidence of the actual hydro and gas bills incurred during this tenancy.

The landlord did not dispute the actual amounts as submitted by the tenant. Rather, the landlord took the position that the tenant had been paying heat and hydro before this tenancy began and there was no expectation that this would change once the landlord became the owner of the property. Actual possession of the home did not change as the tenant's status as the owner of the property simply changed to one of being the sole tenant in this rental home as of 12:00 p.m. on June 15, 2013.

Analysis

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." In this case, the issue in contention narrows to whether the tenancy agreement required the tenant or the landlord to assume the cost of the heating and hydro utilities.

Despite the sparse wording of the three-sentence written tenancy agreement between the parties, I find that there was a written tenancy agreement in place established by way of the Addendum. Whereas a standard Residential Tenancy Agreement would clearly assign who was responsible for paying for various features of the tenancy, including hydro and heat, the tenancy agreement between these parties is silent on this point.

I find that the Contract that the tenant has relied upon as the fundamental basis for her claim uses standard wording used in most typical real estate transactions. With the sole exception of a reference in the Contract to see the fifth page (i.e., the Addendum) "for Rent Back," there is no variation from the typical situation whereby the buyer takes possession of the property on the date of the completion of the sale. However, I find this a most atypical situation, and one which requires consideration of both the wording of the Contract and the three sentence tenancy agreement contained in the Addendum.

The tenant has taken the position expressed by her husband in the emails to the landlord that the silence in the tenancy agreement regarding who was responsible for paying metered utilities such as hydro and heat is to be interpreted in the context of the provisions of Paragraph 6 of the Contract. The tenant noted that the landlord has accepted responsibility for paying some of the items in Paragraph 6 (e.g., property taxes, local improvement assessments, and water), but not others (e.g., heat, hydro). The tenant also cited the landlord's failed attempt to obtain the tenant's signature to the Draft Agreement as evidence that the existing rental agreement included in the Addendum was insufficient to enable the landlord to avoid paying for heat and hydro for this home.

Although I have given the tenant's sworn testimony and written evidence in this regard careful consideration, I find that the purpose of Paragraph 5 was for the Adjustment process at the time of the completion of the real estate transaction and not to assign responsibility for various features of the tenancy agreement created as part of the Addendum. I heard undisputed evidence that the Buyer's (the landlord's) real estate agent created this Contact and Addendum, but with the active participation of and modifications by the Seller's real estate agent, assisted by both parties. The heading of this Paragraph, viewed by the tenant as essential to her claim, is "Adjustments." As is noted in Paragraph 5, this portion of a standard Real Estate Contract is designed to ensure that bills paid either before or after the closing date for the sale are properly pro-rated between the Buyer and the Seller. For example, the Seller will be held responsible for paying the pro-rated amount of the property taxes, a bill which may not yet have been received or paid by the closing date. Similarly, adjustments for various utility bills take into account whether outstanding bills have yet to be issued or paid for a portion of the period prior to the closing date. I find that the purpose of the Adjustment section of the Contract is to take into account the state of these billings as of the closing date and not as part of some secondary or continuing responsibility created by a separate tenancy agreement between the same two parties.

The deficiency in using Paragraph 6 as the basis for the apportionment of utility charges in this tenancy is highlighted by considering that the conditions of Paragraph 5 were

never acted upon until May 31, 2014. Yet, Paragraph 5 of the Contract stated that "The Buyer will have vacant possession of the Property at 12 p.m. on June 15, yr 2013 OR, subject to the following existing tenancies." In this case, the Seller, who became the tenant on June 15, 2013, never did yield vacant possession of the property to the Buyer, until the tenant vacated the home on May 31, 2014. Using the narrowly worded interpretation requested by the tenant, the adjustments as defined in Paragraph 6 deal only with "fuel utilities" and would not extend to the provision of hydro, which is not a fuel utility. Interpreting the exact wording of Paragraph 6 in such literal terms creates an absurdity, especially so when one considers that this Paragraph was intended to take into account a standard issue involved in a sale of real estate. There is nothing in the Adjustments Paragraph of the Contract that would lead me to find that the specific terms were intended to apply to anything beyond "Adjustments" between the Seller and Buyer. For these reasons, I find that Paragraph 6 was not intended to detail what was and was not to have been included in the residential tenancy agreement established between the parties in the Addendum.

I agree wholeheartedly that it would have been prudent for both the landlord and tenant to have specified in the Addendum the terms of their tenancy agreement and whether the tenant was to have continued paying for hydro and heat. Unfortunately, neither the parties, their realtors, nor their lawyers provided any written clarification of the tenancy they were establishing beyond the three sentences contained within the Addendum.

Based on the evidence before me, I find that both parties appear to have genuinely believed in the correctness of their interpretation of the terms of their tenancy agreement. I find that the landlord's attempt during the course of this tenancy to establish certainty with respect to the terms of the tenancy agreement cannot be held against her. I find that her actions in asking the tenant to sign a more clearly worded Draft Agreement does not call into question the sincerity of the landlord's claim that hydro and heat were never to have been included in the tenant's monthly rent. While I have some concerns as to the tenant's delay in applying for dispute resolution to obtain a ruling regarding who was responsible for paying heat and hydro during this tenancy, the tenant was within her legal rights to apply for this monetary award on April 29, 2014. She also provided undisputed written evidence that her husband periodically raised this matter with the landlord throughout much of this tenancy.

I find that the tenant already had an account for hydro and gas, and had been paying for these utilities when she owned the property. As per the terms of her subsequent residential tenancy agreement, the tenant's residency on the property continued unchanged even after the Contract stated that she was to have yielded vacant possession to the Seller on June 15, 2013. Since her residency continued unchanged

after the date when she was to have yielded possession to the Buyer, I find that her responsibility for consumable and metered items such as heat and hydro also continued unchanged when she remained on the premises following the completion of the sale of the home to the landlord. I also find that the Adjustments section of the Contract (Paragraph 6) was intended to detail Adjustments on the closing of the real estate transaction and not to identify what was and was not to have been included in the residential tenancy agreement established between the parties. For these reasons, I dismiss the tenant's application for a monetary award without leave to reapply. As the tenant has not been successful in her application, she bears responsibility for her filing fee.

As this tenancy has ended and the tenant's application dismissed, I also dismiss the remainder of the tenant's application seeking the issuance of orders against the landlord.

Conclusion

The tenant's application to cancel the 10 Day Notice is withdrawn.

I dismiss the tenant's application for a monetary award without leave to reapply. I also dismiss the tenant's application to recover her filing fee as well as the issuance of orders against the landlord without leave to reapply.

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: June 20, 2014

Residential Tenancy Branch