



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Boormans Investment Co Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions. At the onset of the hearing the Tenant clarified that in addition to the monetary amount claimed, the Tenant is seeking an order putting the utilities in the Landlord’s name as indicated in the details of the claim. The Landlord indicated that they were aware of this aspect of the application.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Is the Tenant entitled to an order that the utilities be taken over by the Landlord?

Background and Evidence

The tenancy started on November 1, 2013. Rent of \$1,325.00 is payable monthly on the first day of each month.

The Tenant states that upon signing the tenancy agreement the Tenant also signed an addendum to place the hydro and gas in her name. The Tenant states that there was also an oral agreement that the Tenant would pay for the utilities for both her unit and the lower unit and that the Tenant would be reimbursed \$75.00 per month for the lower unit usage. The Tenant states that after receiving the first utility bill she discovered that she was also paying for the

utilities to the common laundry area that was being used by a third unit and that the lower unit was using more of one of the utilities than the Tenant was being compensated for. The Tenant states that the apportionment between herself and the lower tenant is unfair and that she should not be required to assume the utilities for the common laundry area used by a third unit.. The Tenant claims \$140.00 in compensation for extra utility costs to date.

The Landlord's Agent states that they have only been acting for the Landlord for the past two months and have no evidence on the terms of the utilities agreement. The Agent states that while it would be reasonable for the Landlord to assume the entire costs of the utilities and then apportion the costs between the different entities, the Landlord is unable to make such an offer.

Analysis

Terms of an agreement that are unconscionable are unenforceable. Unconscionable terms are those terms that are so one-sided as to oppress or unfairly surprise the other party. Based on the undisputed evidence that the Tenant was not informed that a laundry room used by a third unit would be using the supply of heat and electricity, I find that the term requiring the Tenant to assume responsibility to pay for all the utilities with only a rebate on the lower unit to be unconscionable. I find therefore that the agreement for the utilities to be in the Tenant's name and to receive the rebate for the lower unit's usage is unenforceable.

As the Landlord indicated that the assumption of the utility costs by the Landlord would be reasonable and in the absence of a term in relation to which party assumes overall responsibility for the utilities, I find that the Tenant is entitled to an order that the Landlord assume responsibility for all the utility costs to the Tenant's unit, the lower unit and the common area laundry room as of September 1, 2014. I also order the Landlord to place the utilities in the Landlord's name as soon as possible thereafter and no later than September 15, 2014.

Although the terms of the agreement in relation to the assumption of overall cost and rebate is no longer enforceable, based on the undisputed evidence that there was an agreement that the Tenant pay for utility usage, I find that the Tenant remains liable for utility costs to her unit. In the absence of sufficient evidence to indicate how, if at all, the rebate agreed upon was based on any proportionate amount between the Tenant's unit and the lower unit, and considering that there is no evidence that the rebate amount took into account usage by a third unit, I find that

the Tenant is entitled to a reasonable apportionment of the total costs of the utilities which, based solely on the Tenant's evidence of less usage cost than the lower unit, I find to be 1/3 of the total cost of utilities for the Tenant's unit, the lower unit and the laundry room and any common areas between or included with these areas.

I also find, given the unfair apportionment on the prior costs of utilities, that the Tenant is entitled to the compensation claimed of **\$140.00**. As the Tenant has been successful with its application, I find that the Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$190.00**. I order the Tenant to reduce future rent payable by this amount.

Conclusion

I order the Landlord to assume responsibility for the provision of utilities to the Tenant's unit as set out above. I order that the Tenant pay 1/3 of the cost of utilities as set out above. I order the Tenant to reduce future rent payable by \$190.00 in full satisfaction of the claim.

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: August 28, 2014

Residential Tenancy Branch

