



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 22, 2014, by the Tenant to obtain a Monetary Order for compensation for hydro and natural gas utilities that have been paid for another tenant's rental suite; an Order to have the utilities put in the Landlord's name; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by the other. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the parties agreed to settle how the hydro and natural gas utilities be managed for this tenancy from this point forward?
2. Has the Tenant proven entitlement to monetary compensation for past payments for hydro and natural gas?
3. Should the Tenant pay for the use of the internet?
4. Should the amount of monthly rent change to accommodate the use of internet?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for the upper level of the house for a fixed term tenancy that commenced on April 1, 2014 and is scheduled to switch to a month to month after March 31, 2015. The Tenant is required to pay rent of \$1,100.00 on the first of each month and on March 10, 2014 the Tenant paid \$550.00 as the security deposit. The tenancy agreement provides that water, garbage collection and cablevision are included in rent and electricity and heat are not included in the rent.

The Landlord testified that the basement rental unit is occupied under a separate tenancy agreement and is currently occupied by one adult fulltime and a five year approximately 50% of the time. The upper suite is currently occupied by this adult Tenant full time and a five year approximately 2/3 of the time. The basement suite has a natural gas fireplace and a natural gas oven/stove. The upstairs unit has a natural gas fireplace and an electric oven/stove. The main source of heat for the entire house is a natural gas forced air furnace that is controlled by one thermostat located in the upper suite.

The Tenant testified that when she first negotiated her tenancy agreement she was not made aware that she would be paying for 100% of the hydro and natural gas utilities for the entire house which includes her own rental unit plus the rental unit in the basement suite. She pointed to various emails provided in her evidence to support that it was her interpretation that she would be paying for her own utilities and not for another tenant's unit. She submitted that when she was planning to go away for a few days in July 2014, she found out through communications with the downstairs tenant and the Landlord that she had been paying for all the hydro and natural utilities for the entire house.

The Tenant argued that her tenancy agreement requires she pay hydro and natural gas for the upper rental unit and not the basement suite. As such she is seeking to recover \$202.19 which is 50% of the total amounts paid (\$404.38) to date as supported by the invoices she submitted into evidence for the following billing periods:

Hydro charges: April 1 to May 8, 2014 Billed on May 12, 2014
 May 9 to July 9, 2014 Billed on July 11, 2014

Natural gas charges April 1 to May 8, 2014 Billed on May 8, 2014
 May 8 to June 6, 2014 Billed on June 6, 2014
 June 6 to July 8, 2014 Billed on July 8, 2014

The Tenant stated that she is also seeking to have the Landlord put the utilities into the Landlord's name and that the responsibility to collect payment of the utilities be with the Landlord.

The Landlord testified, pointing to emails provided in her evidence, which indicate the Tenant was advised that she would be paying utilities for "the house". The Landlord argued that she was of the understanding that the Tenant knew that this meant for the entire house and not just her own rental unit. The Landlord deposed that the arrangement was that this Tenant would pay 100% of the natural gas and hydro and in exchange the Tenant was granted a \$100.00 per month rent reduction and she would have access to cable television and internet at no extra charge.

The Tenant disputed the Landlord's interpretation of their arrangement and argued that she negotiated her rent reduction based on agreeing to sign a one year lease and not to do with free access to internet or cable. The Tenant argued that she did not require cable television as she did not own a television and she did not require internet as she had service on her telephone.

The Landlord pointed to the email evidence and argued that the Tenant requested access to the internet and has had access since the password was provided to her on April 2, 2014. The Landlord was of the opinion that if the Tenant was no longer going to pay 100% of the hydro and natural gas then she should have to pay 50% of the internet at \$30.80 (50% of \$61.60) per month and her rent should increase to \$1,175.00.

The Tenant argued that the internet was to be included in rent, as noted in the advertisement listed for this rental unit. She disputed the request for increased rent and reargued that her rent was negotiated based on signing a fixed term lease.

After a brief discussion about the requirements of the *Residential Tenancy Act* and common law the parties attempted to settle these matters as they related to: (1) whose name the hydro and natural gas utilities will be billed to; (2) what percentage of hydro and natural gas the Tenant is required to pay; (3) how much the Tenant should pay for internet if anything; and (4) if the monthly rent should be increased.

The parties were able to reach a settlement agreement on items (1) and (2) as listed below. Items (3) and (4) have reverted to requiring an arbitrated decision and will be decided upon below.

At the conclusion of this hearing the Landlord was issued the following Oral Order:

The Landlord was ordered to contact the hydro and natural gas companies today, September 23, 2014 to make arrangements to switch both accounts into the Landlord's name as soon as possible. The Landlord was ordered to inquire about having the change effective for the current billing periods if possible. The Landlord was further ordered to inform the Tenant in writing, by email or another written form, of the effective date of the change.

Both parties were advised that once the accounts are switched into the Landlord's name the Landlord will be required to provide the Tenant with a copy of the actual bills and a written demand for payment of her share of the utilities costs.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Section 6(3) of the *Act* stipulates that term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations; the term is unconscionable; or the term is not expressed in a manner that clearly communicates the rights and obligations under it.

The *Residential Tenancy Regulation* stipulates that for the purposes of section 6 (3) (b) of the Act [*unenforceable term*], a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

The *Residential Tenancy Policy Guideline # 1* provides 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 to be unconscionable as defined in the Regulations.

In this case I find the requirement of the Tenant to have to pay the hydro and natural gas utilities for the tenants of the lower suite, who are under a separate tenancy, to be unconscionable, as per the Act, Regulations, and Policy Guideline listed above. I make this finding in part because the consumption of the hydro and natural gas utilities are dependent on the weather and usages, which cause the overall costs to fluctuate, despite the opportunity to be on an averaging payment plan. Therefore, the costs of

hydro and natural gas utilities cannot be compared to or considered equal to fixed costs such as television and internet services.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a partial resolution of their dispute on the following terms:

- 1) The Landlord will place the hydro and natural gas utilities in her name as soon as possible
- 2) The Tenant is required to pay 50% of the hydro cost and 50% of the natural gas costs, based on the current occupation of the house (1 adult fulltime resident and a 5 year old residing approx. 2/3 of the time in the upstairs suite and 1 adult fulltime resident and a 5 year old residing approx. 50% of the time in the downstairs suite).

In addition to my Oral Order listed above, and the settled items listed above, I find as follows:

The above settlement agreement was based on the current occupation of the rental suites (1 adult and a 5 year old in each of the upper and lower suites). Therefore, I further Order that if the number of occupants in the upper level increase, other than for a period for short term guests, then the Tenant will be required to pay a higher percentage for utilities. If the number of occupants increases in the basement suite, other than short term guests, then this Tenant would pay a lower amount while the downstairs occupants would pay a higher percentage, and so on.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the foregoing, I accept that the Tenant has overpaid for the cost of hydro and natural gas by 50% of each utility from the start of her tenancy on April 1, 2014 to July 8, 2014 for the natural gas and to July 11, 2014 for hydro. Accordingly, I award the

Tenant monetary compensation equal to 50% of the total amounts paid totaling **\$202.19** (50% x \$404.38).

Once the hydro and natural gas accounts are converted into the Landlord's name, if there are additional usage costs for hydro or natural gas remaining on the Tenant's accounts, the amounts are ordered to be proportioned at 50% for the upper unit and 50% for the basement suite. The Tenant is required to provide the Landlord with copies of the final bills and the amounts owed may be deducted from the Tenant's next rent payment.

Upon review of the written tenancy agreement, I accept the Landlord's submission that internet is not listed as a service that is included in the rent. Accordingly, I find the Tenant must pay for internet service at a cost of \$30.80 per month from the April 2, 2014 onward. Accordingly, I find the Tenant owes the Landlord six months payment for internet service of **\$184.80** (6 x \$30.80) for the period from April 2, 2014 to September 30, 2014. As calendar months have a different number of days in them throughout the year (28, 30 or 31 days) no adjustment is made for lack of access on April 1, 2014.

In the event the Tenant wishes to discontinue accessing the internet service she will be required to serve the Landlord with one month's written notice prior to the first of the month to cancel the service effective the following month. For clarity, if the Tenant provides the Landlord notice to cancel the internet service by September 30, 2014, the service will end October 31, 2014, and the Tenant will be responsible for payment for the service until October 31, 2014.

As I have ordered the Tenant to begin paying for the internet service, I find the Landlord is being compensated for any amount the rent was reduced to accommodate for the anticipated non-usage of the internet. I accept that the remaining reduction is based on the Tenant signing a one year lease and non-usage of the cablevision. If at a future date the Tenant wishes to access the cablevision services the Tenant will be required to negotiate access and payment of such a service. Accordingly, I find that cablevision is NOT included in the monthly rent and I hereby order that the rent remains at \$1,100.00 per month, pursuant to section 62 of the Act.

The Tenant has primarily succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Conclusion

The Landlord is HEREBY ORDERED to put the natural gas and hydro utilities into the Landlord's name and provide the Tenant with copies of future bills along with a written demand for payment, as ordered above.

The tenancy agreement is HEREBY AMENDED to remove cablevision as being included in rent, to add that the Tenant is required to pay 50% of the hydro and 50% of the natural gas costs based on the current occupation of the upper and lower rental suites; plus the Tenant is required to pay 50% of the internet costs. Internet usage is optional and may be cancelled by the Tenant after 30 days written notice is provided to the Landlord. The monthly rent remains at \$1,100.00 payable on the first of each month. The foregoing changes and clarifications are hereby ordered, pursuant to section 14(3)(c) of the Act.

The Tenant has been awarded compensation of \$202.19 for utilities plus the \$50.00 filing fee which I Order to be offset against the \$184.80 owed to the Landlord for internet access, which leaves a balance owed to the Tenant of **\$67.39**. The Tenant may deduct the one time award of \$67.39 from her next rent payment.

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: September 23, 2014

Residential Tenancy Branch

