



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, OPC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated October 4, 2013. The tenant was also seeking clarification regarding the tenancy terms with respect to the payment of utilities.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

Preliminary Matters

Service to Landlord

The landlord protested that she was not served with the Notice of Hearing by the tenant within 3 days and only received the details of the tenant's claims after a substantial delay. The tenant acknowledged that service was late and explained that he made several attempts but the landlord was not available.

I find that the tenant did not comply with the Act. However, it was determined that the hearing would proceed. I find that the landlord was already aware of the issues under dispute as the parties had discussed the Notice and other matters related to the dispute prior to the hearing. I find that the landlord did receive the documents in time to serve and submit her own evidence and was not prejudiced by the tenant's failure to comply with the Act.

Waiver/Withdrawal of Notice

The parties advised that the tenant had paid the outstanding rental arrears in full on October 15, 2014, a few days after the tenant made this application. The

landlord stated that she has withdrawn the 10-Day Notice to End Tenancy for Unpaid Rent. Under the Act, a Notice cannot be unilaterally withdrawn by the party issuing it. However, in this case, the tenant has agreed to the withdrawal of the Notice.

The tenant stated that the issue of unpaid rent was triggered by his over-payment of utilities and the tenant is still requesting that the tenancy terms respecting utility payments be clarified.

Application Issues

The first page of the tenant's application indicated that the tenant was only seeking to cancel the 10-Day Notice to End Tenancy for Unpaid Rent but in the details of the dispute the tenant attached a document that states,

"The landlord asked me to have the BC hydro and Gas registered in my name to pay for my utilities when I moved in. When I called bc hydro and Gas to have them in my name I found there is only one meter for hydro and one meter for gas, and there are two tenants in that building, so I calledthe landlord and told her why didn't she tell me there are only one meter for gas and one for hydro, she told me the tenant upstairs always pays for all the utilities, so I told her I would never agreed to that and will notI have also asked her to have the utilities changed to her name, but she refuses that" (Reproduced as written)

I find that the remaining dispute issue to be determined is a request for an order to force the landlord to comply with the Act, , regulations or the tenancy agreement, (OLC).

The tenant's first and last name was also clarified as the style of cause on the application listed the name in two different ways. The application has been amended accordingly.

Sever Unrelated Dispute Issues

During the hearing, the tenant also requested an order that the landlord remove her items from the tenant's area in the garage. The tenant also stated that they are seeking financial reimbursement for over-paid utilities.

In regard to the portion of the tenant's application dealing with the tenant's request for an order to force the landlord to remover her stored items, I find that Rule 2.3 of the Residential Tenancy Rules of Procedure, allows the arbitrator to dismiss unrelated disputes contained in a single application with or without leave

to reapply. Accordingly, I hereby dismiss this portion of the dispute with leave to reapply.

In regard to the tenant's additional claim for monetary compensation I find that this matter cannot proceed as the monetary claim was not part of the original application. Therefore I decline to hear this portion of the dispute pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act)*, because the application for dispute resolution failed to provide sufficient particulars of the claim, as required by section 59(2)(b) of the *Act*.

The tenant is at liberty to make a separate application with respect to this matter.

Issue(s) to be Decided

Should the landlord be ordered to comply with the Act or agreement with respect to tenancy terms for payment of utilities?

Background and Evidence

Submitted into evidence were copies of correspondence, a copy of the tenancy agreement showing that the utilities are not included in rent, proof of service, , receipts and written testimony from the tenant.

The tenancy began approximately on June 1, 2014 and rent is \$1,050.00 per month and does not include utilities.

The tenant testified that although he agreed to pay his own utilities as per the written agreement, and agreed to place the utility accounts in his name, he was never told by the landlord that the hydro meter and the gas meter served two different units.

The landlord stated that this information was given to the tenant verbally when the tenancy began. The landlord stated that it is always their practice to have the upstairs tenant pay the utilities for both units. The landlord submitted evidence from previous tenants confirming that they paid for all of the utilities.

The tenant testified that, when he expressed his concerns to the landlord after discovering that the accounts in his name served the entire building, the landlord verbally committed to refunding the tenant 50% of the utility costs. The tenant testified that the landlord has not paid for any of the costs to date and also advised the tenant that he will be responsible for 60% of the utilities based on square footage. The tenant stated that, although he is in agreement with paying for half the hydro and gas, he feels that the utilities should be administered by the landlord and that the accounts should be placed in the name of the landlord.

Analysis

I find that the tenancy agreement between these two parties clearly indicates that the tenant must pay for the utilities for his own usage. I find that the landlord apparently required, as a term of this tenancy, that the tenant place the utility account into the tenant's name.

I accept that the tenancy agreement did not specify that the tenant would be responsible for accounts that served more than one rental unit. Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if:

(a) the term is inconsistent with this Act or the regulations;

(b) the term is unconscionable, or;

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it. (my emphasis)

Section 5 of the Act also provides that landlords and tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect.

Given the above, I find that, even if the tenancy agreement had specifically stated that all parties had consented to this utility arrangement, a tenancy term that requires one tenant to cover utilities also for another rental unit and administer an account serving other rental units, is not an enforceable term under the Act.

I find that the above tenancy term is unconscionable pursuant to section 6(3)(b) of the Act. Moreover, because it is also a verbal term and not detailed in written form, I find that it is not expressed in a sufficiently clear manner, pursuant to section 6(3)(c) of the Act.

In the circumstances described above, I find that the utility account must be registered in the landlord's name. Accordingly, I hereby order the landlord to transfer the hydro and gas accounts into the landlord's name without delay.

I order that there is now an enforceable term in the written tenancy agreement that the tenant will be responsible to pay the landlord 50% of each hydro invoice and 50% of each gas invoice to the landlord each billing period and to do so within 30 days of being presented with a copy of the utility company's invoice.

Finally, I order that the landlord reimburse the tenant for 50% of all payments made prior to this decision and prior to the landlord placing the utility accounts in the landlord's name. If either of the parties dispute the amounts or dates regarding this retroactive

reimbursement, they are at liberty to make an application for dispute resolution with respect to the matter.

The above orders must be served by the tenant on the landlord and can be enforced through an application for dispute resolution, should the landlord fails to comply.

The tenant is entitled to be reimbursed for the \$50.00 cost of this application and may deduct this amount from the next rent payment owed to the landlord.

Conclusion

The tenant is successful in the application and the landlord is also ordered to place the hydro utility account in the landlord's name and reimburse the tenant for 50% of past utility payments made. The other issues that arose from the tenant's application are severed and dismissed with 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: November 18, 2014

Residential Tenancy Branch

