Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEXA PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RR, FF

Introduction

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

- a monetary order for money owed or 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 to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's agent, TM ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord's agent confirmed that she represents the personal landlord owner, KM ("owner"), who is her father-in-law and who is named in the tenancy agreement, as well as the landlord company, LP, named in this application. This landlord company is also named as the landlord's agent in the tenancy agreement. The tenant stated that she did not wish to amend her application to include the personal landlords TM and KM, as respondent landlords.

The tenant testified that she served the landlord with her application for dispute resolution hearing package ("Application") by way of registered mail, but that she could not recall the exact date. She stated that the landlord retrieved the package on December 16, 2014. The landlord confirmed receipt of the tenant's Application. In accordance with sections 89 and 90 of the Act, I find that the landlord was duly served with the tenant's Application, as declared by the parties.

Preliminary Matters

During the hearing, the tenant withdrew her application for a monetary order, for an order to her to reduce rent, and to recover the filing fee. Accordingly, these applications are withdrawn.

The tenant testified that she was provided with a cheque in the amount of $335.60 from the landlord, the day before this hearing, which included reimbursement for the monetary relief sought by the tenant in her application. These include $255.31 for the cost of an electrical utility bill for the rental unit, dated December 2, 2014, the $50.00 filing fee for this application, and $30.00 for the cost of registered mailing of the tenant's application to the Residential Tenancy Branch and the landlord.

Issues to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

Both parties testified that this tenancy began on June 27, 2013 for a fixed term ending on July 30, 2014, after which it reverted to a month to month tenancy. Monthly rent in the current amount of $1,226.00 is payable on the first day of each month. A security deposit of $600.00 was paid by the tenant on June 21, 2013, and the landlord continues to retain this deposit.

The landlord testified that she was personally involved in many of the events with respect to this tenancy, including signing the tenancy agreement and communicating directly with the tenant, regarding the terms of this tenancy.

The tenant testified that this rental unit was advertised in June 2013 at $1,200.00 per month for rent, including utilities. She provided a copy of this advertisement with her application. Both parties signed the tenancy agreement on June 21, 2013. The tenancy agreement indicates that water, electricity and heat ("utilities") are included in the monthly rental amount of $1,200.00. The tenancy agreement references a one-page addendum with 11 terms ("addendum"). The addendum does not reference utilities. The addendum was signed by the tenant and this landlord on June 21, 2013.

The tenant provided a number of emails, as evidence of the following communications with the landlord, regarding utilities in the rental unit. The tenant references the word

“utilities,” while the landlord references “electricity” throughout this hearing and their email communications. This decision and the orders below will use the word “utilities” to reference water, electricity and heat in the rental unit.

On March 31, 2014, the tenant received an email from the landlord, attaching a Notice of Rent Increase (“NRI”), which is undated and unsigned. It states that rent in the amount of $1,226.00 is due beginning on July 1, 2014. The monthly increase is of $26.00, in addition to the original monthly rental amount of $1,200.00. The tenant disputed the start date of the rent increase, as her tenancy agreement indicated that her tenancy began on June 27, 2014 and ended on July 30, 2014, as per the fixed term. The tenant began paying the new rental amount of $1,226.00 beginning on August 1, 2014. The tenant does not dispute the amount of the rent increase, as it is in accordance with the legal amount allowed under the Residential Tenancy Regulation, or the fact that it was emailed to her, even though this service method is not in accordance with the *Act*.

In the same email from the landlord, dated March 31, 2014, the tenant was also advised that she would personally be responsible to pay the electricity for the rental unit, after one year of tenancy, effective July 2014. The email further stated that “all other items included per the original tenancy agreement stays the same.” The tenant responded to the landlord’s email on May 24, 2014, by alerting the landlord to section 14 of the *Act*, and the fact that the terms of the tenancy agreement could not be changed by the landlord without prior written agreement from the tenant. The landlord replied by indicating that the tenant had previously agreed to pay for electricity after one year.

The tenant stated that she received a utility bill in her name for the rental unit in September 2014. The tenant notified the landlord in October 2014 that the utilities were to be paid by the landlord as per the tenancy agreement, that the tenant had not authorized the bill to be placed in her name and that the name of the bill was to be in the landlord’s name. The landlord replied by indicating that she had a paper copy of the tenant`s agreement to pay for electricity and if the tenant opposed paying for electricity, then the landlord would have to sell the rental unit. The landlord also indicated that the electricity had been transferred from the landlord`s to the tenant`s name and that the terms of the tenancy agreement had not been changed because the tenant signed an agreement. The landlord indicated that electricity was originally included in the rent as an incentive but that it was later discovered that the tenant’s electricity bills were higher than the other units in the building at $250.00 to $350.00 per bill every two months, for a one bedroom unit. The landlord indicated that the rental property is now listed for sale, as the landlord is unable to afford the utilities in the tenant’s rental unit.

In October 2014, the tenant advised the landlord that the owner could sell the rental unit if he wished but that the *Act* provisions would need to be followed with respect to this tenancy, and that the tenant expected the landlord to pay for utilities, as per the tenancy agreement. The tenant forwarded the landlord a copy of the tenancy agreement and the signed addendum, quoted the relevant *Act* provisions, and requested the utilities agreement documentation from the landlord, as the September 30, 2014, utilities bill had not yet been paid. The landlord replied by indicating that she had a one page document agreement, which indicated that the tenant was responsible for paying electricity. However, the landlord did not provide a copy of the agreement to the tenant, at this time.

In November 2014, the tenant advised the landlord that she would be filing an application for dispute resolution because the landlord had not complied with the *Act* and she was concerned that the utilities would be disconnected at her rental unit. The tenant indicated that the landlord provided a one page document, dated June 21, 2013 ("agreement"), on November 4, 2014. The landlord stated in her email of November 4, 2014, that she had "scanner problems" and she had not sent this agreement to the tenant because "scanning it fell through the cracks." The tenant maintained that she had not signed the agreement, that it was fabricated by the landlord, that her initials were forged on the agreement, and that it was not part of the tenancy agreement. The agreement appears to have the tenant's initials at the end of the document, which is handwritten and states as follows:

> "*The tenant understand electricity (hydro) is included in the rent for only 1 (one) year. The tenant will be responsible for paying for electricity after 1st year.*"

The landlord testified that her husband, "E," drafted the above document but he did not sign it. E did not testify at this hearing. The landlord indicated that she did not draft or sign the agreement herself because her husband was showing the rental unit to the tenant prior to the start of the tenancy. The landlord stated that the tenant signed the agreement but no one witnessed this signing. The landlord indicated that a copy of the agreement was not provided to the tenant with the original tenancy agreement and addendum, as the landlord was disorganized and was moving at the time. The landlord claimed that she discovered the agreement in her file in November 2014. When questioned, the landlord could not explain why the document did not contain the names of the landlord and/or the tenant, the address of the rental unit, any landlord and/or tenant signatures (only the tenant's initials appear on the document), or any witness signature(s).

The tenant testified that she emailed the owner of the rental unit, KM, in early November 2014, advising him that the agreement was fabricated and the landlord was required to pay the electricity bill or it would be disconnected. The tenant did not receive a reply to her email so she re-sent her earlier email to the owner and the landlord and explained the *Act*, insisted that the agreement was fabricated and provided another copy of the tenancy agreement and the addendum.

The tenant received another electricity bill in December 2014, for four months of unpaid electricity, totalling $255.31, which included the previous unpaid electricity amount from September 2014. The tenant testified that she paid this amount in December 2014, after her conversation with the RTB, in order to avoid disconnection of electricity at the rental unit. The tenant provided a copy of this bill with her Application, which includes the rental unit address and the tenant's name on the bill. The tenant filed her Application on December 4 and amended it to correct the landlord's name on December 10, 2014.

An email from the landlord to the tenant, dated December 8, 2014, advised that the owner will reimburse the tenant for the electricity bill and that the name of the electricity bill would be changed over from the tenant to the owner`s name. The email also advised the tenant that the owner was now forced to sell the rental unit because the landlord was only to pay for electricity for one year, as agreed by the tenant. The tenant advised the landlord via email on December 8, 2014, that she had paid the utilities bill, required a reimbursement for it, and that she was proceeding with this hearing based on the landlord`s assertion that she signed the fraudulent agreement.

The tenant testified that she has talked to the landlord and the owner since filing her Application and before this hearing. The tenant provided a number of emails between her and the landlord from December 2014. The emails from the tenant to the landlord involve repeated references to various provisions of the *Act,* particularly sections 7, 14 and 27 of the *Act*, as well as the tenant`s intentions to proceed with this hearing if the landlord refused to comply with the *Act*. The emails also repeatedly advised the landlord that the tenant will file criminal reports with the police for the alleged fraudulent agreement and asked the landlord to acknowledge that the agreement was fabricated by the landlord. The emails also asked the landlord to pay for the utilities to avoid disconnection of service, transfer the utilities back in the landlord`s name, acknowledge that the utilities are included in rent as per the tenancy agreement, and reimburse the tenant for payment of utilities and costs for this application. The tenant referenced her attempts to resolve the situation in order to avoid this hearing. The emails from the landlord maintained that the agreement forms part of the tenancy agreement, that the

tenant signed the agreement, and that the tenant is responsible for paying for the electricity after one year of tenancy.

As noted earlier, the tenant received reimbursement for the electricity bill that she paid, as well as her Application fee and the registered mailing costs for the Application. The landlord testified that the electricity bill had been changed back over into the landlord owner's name and that the owner agreed to pay for the utilities for this rental unit. The landlord has not provided written evidence to the tenant, regarding the name change on the electricity bill. The landlord testified that this reimbursement and agreement of the landlord to pay the utilities was done because of cultural issues, to avoid the Residential Tenancy Branch proceedings, and as a gesture of goodwill. The landlord testified that it had nothing to do with the agreement, which she maintains was not fabricated or forged by the landlord.

The tenant indicated that she had a meeting with the owner and a real estate agent, whereby the owner advised the tenant that this landlord had made a mistake and was trying to protect the owner. The landlord testified that she does not know why the owner said that she made a mistake and did not want to speculate about his comment.

The tenant asked the landlord to provide confirmation that the agreement, that the tenant asserts was fabricated, does not form part of the tenancy agreement and that it was fabricated. The tenant stated that she received a letter from the landlord acknowledging the tenant's assertion that the agreement was forged but not admitting that the agreement was forged by the landlord. The tenant seeks an order for the landlord to comply with the *Act* and the tenancy agreement, as she is concerned that this matter will reoccur in the future, as the landlord asserts that the agreement forms part of the tenancy agreement.

Analysis

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

The tenant seeks orders for the landlord to comply with the *Act* and the tenancy agreement. The following provisions are set out for the benefit of both parties, although the tenant has provided these provisions to the landlord in her previous email communications:

Liability for not complying with this Act or a tenancy agreement

7 *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Changes to tenancy agreement

14 *(1) A tenancy agreement may not be amended to change or remove a standard term.*

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:

(a) a rent increase in accordance with Part 3 of this Act;

(b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 [terminating or restricting services or facilities];

(c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

Terminating or restricting services or facilities

27 *(1) A landlord must not terminate or restrict a service or facility if*

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The tenant seeks written evidence from the landlord that the utilities for her rental unit are in the landlord's name and not the tenant's name. The landlord testified that she would obtain a letter from the electricity company provider, confirming the name of the landlord on the electricity bill for this rental unit address, and provide the tenant with a copy.

The tenant also seeks a valid and legal notice of rent increase, for her current rent of $1,226.00, with the correct effective dates, amounts and a signature from the landlord. The landlord agreed to provide the tenant with a copy of this form, with the above information, to the tenant.

The tenant seeks clarification as to whether her rent includes utilities, as per her tenancy agreement, in which case the landlord would pay for the utilities. The tenant seeks clarification as to whether this agreement, which she says is forged, is a valid document which forms part of the tenancy agreement, requiring the tenant to pay utilities in addition to rent. The landlord testified that the owner agreed to pay for the utilities in this rental unit for the remainder of this tenancy.

I find that the one page agreement, dated June 21, 2013, does not form part of this tenancy or the tenancy agreement for this rental unit. I find the tenant's evidence regarding this agreement to be truthful, reliable and credible. I do not find the landlord's evidence regarding this agreement to be credible. The agreement does not reference any names, addresses or signatures. The agreement does not state that it applies to this tenancy at this rental unit for these parties. The agreement references "one year"" but does not indicate any specific time periods as to what year it becomes effective or even the start date of the tenancy. The agreement references "rent" but does not indicate any amounts for rent. The agreement contains the tenant's initials but no one witnessed this signing and I accept the tenant's evidence that she did not sign this document. The landlord did not produce her husband, E, who she says drafted the document, as a witness at this hearing. The landlord cannot explain the above deficiencies with respect to the agreement.

The agreement was not provided to the tenant with the tenancy agreement or the signed addendum, both dated on June 21, 2013. The agreement was provided almost 1.5 years later to the tenant, after the landlord discovered that the utilities amount in the tenant's rental unit was too high for the landlord to pay. I find that the landlord's reimbursement to the tenant for the electricity bill, as well as the landlord's testimony that the electricity utilities was put back in the landlord's name, is a further acknowledgement by the landlord that this agreement did not form part of this tenancy or the tenancy agreement.

Accordingly, I find that the tenant's rent amount includes utilities of water, electricity and heat, as per the tenancy agreement signed by both parties on June 21, 2013, and for the remainder of this tenancy. As the current rent amount is $1,226.00, this amount includes all utilities. If the rent is legally changed in accordance with the *Act*, the new legal rent amount would include utilities as well, unless there is a written mutual agreement signed by both parties, stating otherwise. The utilities for this rental unit are not to be charged to the tenant as an extra amount in addition to rent, for the remainder of this tenancy, unless there is a written mutual agreement signed by both parties, stating otherwise. The landlord is not permitted to restrict or withdraw these utilities at the rental unit for the remainder of this tenancy, as per sections 14 and 27 of the *Act*. The landlord is not permitted to change the name on the account of the utilities to the tenant's name at any time during the remainder of this tenancy, unless there is a written mutual agreement signed by both parties, stating otherwise. The landlord is required to have the utilities in the landlord's name only, not the tenant's name, for this rental unit for the remainder of this tenancy, unless there is a written mutual agreement signed by both parties, stating otherwise.

Conclusion

In accordance with section 62(3) of the *Act*, I order the landlord to comply with the following terms, which are effective immediately and for the remainder of this tenancy:

1) the landlord is required to pay for the water, electricity and heat utilities ("utilities") for this rental unit for the remainder of this tenancy, which utilities are included in the monthly rent amount for this rental unit, as per the terms of the original tenancy agreement which was signed by both parties on June 21, 2013, unless there is a written mutual agreement signed by both parties, stating otherwise;
2) the landlord is not permitted to change the name on the account of the utilities to the tenant's name at any time during the remainder of this tenancy, unless there is a written mutual agreement signed by both parties, stating otherwise;
3) the landlord is required to have the utilities in the landlord's or the landlord owners' name only, not the tenant's name, for this rental unit for the remainder of this tenancy, unless there is a written mutual agreement signed by both parties, stating otherwise;
4) the landlord must provide written evidence to the tenant, from the electricity company/companies, by no later than February 15, 2015, that the electricity is in the landlord's or landlord owners' name only and not the tenant's name;
5) the landlord must provide the tenant with a legal notice of rent increase with the correct dates, the landlord's signature and for the current rental amount of $1,226.00, by no later than February 15, 2015.

If the landlord does not comply with the above orders #1 to #3 inclusive, the tenant is permitted to reduce her monthly rent by $100.00 as of the first and second months of non-compliance; $300.00 as of the third and fourth months of non-compliance; $500.00 as of the fifth and sixth months of non-compliance; and $700.00 for the seventh, eighth and any additional months of non-compliance. This rent reduction is to take effect on the first day of the following month after the non-compliance occurs.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and authorization to recover the filing fee for this application from the landlord, are all withdrawn.

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 4, 2015

Residential Tenancy Branch