



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, OLC, MNDC, FF

Introduction

This was a hearing with respect to an application by the tenant for repairs, including emergency repairs, for an order that the landlord comply with the *Residential Tenancy Act*, Regulation or tenancy agreement and for a monetary award. The hearing was conducted by conference call. The tenant participated in the hearing and the landlord attended with his wife. The landlord submitted documents prior to the hearing.

Issue(s) to be Decided

Should the landlord be directed to perform emergency repairs?

Should the landlord be ordered to comply with the Act Regulation or tenancy agreement?

Is the tenant entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a house in Burnaby. It contains a separate suite in the basement of the house. The tenancy began on June 15, 2015 for a fixed term ending May 31, 2016. The monthly rent was \$2,150.00 and the tenant paid a security deposit of \$1,075.00 on June 1, 2015. The tenancy agreement included an addendum with 12 additional terms. Item 10 of the addendum provided that:

The tenant will be responsible for the utilities for the entire building (includes basement suite)

The tenant signed a new tenancy agreement for a fixed term beginning June 1, 2016 and ending May 31, 2017 at the same rent and on the same terms as the original agreement, including the addendum provisions.

In the tenant's application filed on July 2, 2016 he claimed for a refund of utilities paid. He said that there is an illegal site in the basement of the rental unit and he has paid utilities for the entire rental property without compensation from the landlord or the tenant of the basement suite. The tenant requested that the landlord be directed to install separate power meters for the two suites.

The tenant also testified that the circuit breaker for the rental unit is located in the basement suite. The tenants do not have access to the suite and when a circuit breaker is tripped the tenants do not have access to reset the switch. The tenants requested access to the breaker to reset it if the power goes out.

The tenant testified that because there is an illegal suite in the basement, there is no emergency exit in the tenant's portion of the basement of the house where his two daughters sleep. He requested that the landlord be ordered to install or provide access to a suitable emergency exit in the basement.

The landlord testified that the tenants viewed the property in May, 2015 and expressed interest in renting it. He said the tenants were offered a lease that required the tenants to pay the utilities for the entire house. The landlord said that the rent for the house was less than the market rent for the house and was discounted to reflect the inclusion of an additional amount for utilities. The landlord provided records of his e-mail exchanges with the tenants. He said that the tenants enquired about continuing their tenancy after the lease expired. The landlord told the tenant that he would offer them a new lease on the same terms. The tenants said they would like to continue on the same terms. The landlord presented the tenants with a new lease on the same terms, including the monthly rent. When the landlord asked for the return of the executed lease two weeks before the expiry of the term, the tenants said they would prefer to: "go forward on a month to month basis", as it provided flexibility. The landlord told the tenants that he would not accept a month to month tenancy. The tenants did sign the new tenancy agreement for a further year on the same terms.

In June, 2016 the tenant made an e-mail request for a second power meter and that the basement tenants pay for their own utilities, including electricity and gas. The landlord refused to install separate meters. He said that this was the arrangement and it was why he underpriced the house. He said that he would understand if the tenants did not like the situation and wanted to find another place. The tenant responded with a request that the landlord install a separate power breaker box in the rental unit, or a key to access it. He also complained that he was forced to sign a new tenancy agreement under duress and was unable to negotiate terms due to the landlord's: "bullying tactics".

The tenant also said that he intended to follow up on the status of the basement suite with the appropriate bodies.

The tenant said that his daughters sleep in the basement bedroom when they stay with him at the rental unit. He said that the room does not comply with safety standards because there is not an emergency exit from the room.

The landlord testified that the tenants have had to request the downstairs tenant to reset the circuit breaker on two occasions. The landlord said he was contacted twice by the tenants about the circuit breaker. The first instance was in December, 2015 after a furnace failure when electrical heaters caused a circuit breaker to trip. The landlord was unavailable, but he called an agent and hired a locksmith; the circuit breaker was reset within hours. On the second occasion when the landlord was told that a circuit needed to be reset, he contacted the basement tenant and it was reset immediately.

With respect to the basement area that forms part of the rental unit; the landlord said that the tenant is correct that there is no exterior door in the tenant's portion of the basement, but there are three windows that open to allow escape from the basement. He said that the basement room was not intended as a bedroom. He said that it is a room with a faux fireplace and no closet with two windows that open to the outside. There are five windows in the basement; three of which open to the outside.

The landlord testified that there are three bedrooms in the upper portion of the house and when the tenants rented the house they stated that one child lived with them and up to five children from a prior relationship would stay at the house every second weekend. The landlord said that the tenants accepted the accommodations when they agreed to rent the unit and nothing has changed since then. The landlord testified that the basement was never the subject of any complaints until the tenant filed this application.

The landlord said that all of the tenant's complaints were made after the tenants signed a new lease and then began making what the landlord considered unreasonable requests to modify the terms of the tenancy. He mentioned other requests including the installation of central air conditioning and removal of a tree because the fallen leaves were troublesome.

The landlord said that the tenants were free to end the tenancy upon one month's notice without penalty or to continue the tenancy for the remainder of the term, but he submitted that the tenant's claims in this proceeding were unreasonable and should be dismissed.

Analysis

The tenant's argument that he should be reimbursed for utilities and that a separate meter should be installed is based on a provision in the Residential Tenancy Policy Guidelines. The guideline with respect to Landlord and Tenant – Responsibility for Residential Premises contains the following comments about shared utility service; it notes that:

1. 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 unconscionable as defined in the Regulations.
2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

I agree as a general principle that tenants should not be responsible for payment of a utility bill that includes usage for occupants who do not live in the rental unit, but in the present case the landlord, who formerly lived in the rental unit and paid the utilities himself for both units, included the explicit term as to utilities set out above. There was no attempt to deceive the tenants; the landlord testified that the rent rate was reduced to reflect the payment. The point of offsetting a reduced rent against the added utility charge was to avoid having to make extensive modifications to the rental property.

The tenant did not submit any documentary evidence concerning the monthly rent charged by the landlord. I accept the landlord's testimony that the monthly rent for the rental unit was less than the prevailing market rent for a unit of similar size, quality and location. Because the tenant accepted the explicit term in the tenancy agreement and agreed to a further term on the same basis, I find that, in the particular circumstances of this tenancy that the tenancy agreement requiring the tenants to pay the full utility bill does not constitute an unconscionable term of the agreement and it is enforceable. I therefore dismiss the tenant's application for a monetary award and for an order directing the landlord to install separate meters.

I find that the landlord has taken reasonable actions in responding to the tenants on the few occasions when a circuit breaker has tripped. I do not find that there is a significant

problem that would justify requiring the landlord to provide the tenant with keys to the basement suite or to install a separate electrical panel in the rental unit.

Finally, with respect to the basement of the rental unit, the tenant was fully aware of the layout of the rental unit when he agreed to rent the unit. Nothing has changed since then. The tenant has not provided any documents to establish that the layout of the unit or the absence of an outside door in the basement is a violation of any code or bylaw. The tenant chose the rental unit and has made his own choice as to the use to which the basement would be put and I find that there is no merit to this portion of the tenant's claim.

Conclusion

The tenant's application is dismissed in its entirety 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: September 14, 2016

Residential Tenancy Branch