



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC PSF 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 to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The landlord acknowledged service of the tenant's application including evidence on file. The landlord also submitted a 42 page evidence package in response to the tenant's application. However, the landlord testified that he did not serve a copy of this evidence package to the tenant as required. The landlord's evidence package was excluded from this hearing.

Issues

Is the tenant entitled to compensation for reimbursement of a portion of the utilities paid by him?

Should the landlord be ordered to provide services or facilities required by law?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy began on August 1, 2014. The monthly rent as per the tenancy agreement is \$1250.00 per month. Electricity and heat is not checked off as being included in the tenancy agreement. The tenancy agreement also includes a one page addendum signed by both the tenant and the landlord at the time of entering into the tenancy. The

second clause of this addendum states the tenant will be responsible for 100% utilities for the entire house. The tenant's name in this clause is bolded and underlined.

Since the beginning of the tenancy to the date of this hearing, for a period of just under 4 years, the tenant has been paying 100% of the Hydro and Gas for the entire house. The rental property is a two storey house. The tenant and his three children have been occupying the upper portion of the house since the beginning of the tenancy. The upper portion consists of three bedrooms, two bathrooms, kitchen, living room, den plus a garage. The lower portion of the house has been occupied by a couple who had a tenancy with the landlord a number of years prior to the tenant moving in upstairs. The lower portion consists of a one bedroom suite with one bathroom and a combined kitchen and living area. The utilities for the tenants in the one bedroom suite are included in their monthly rent amount.

The tenant is claiming reimbursement of 40% of the Hydro and Gas he has paid to date. The tenant testified that at the beginning of the tenancy he was asked to put all the utilities in his name to which he complied. He testified that he had no idea that the other tenants were not paying a share of the utilities. Seven months into the tenancy he realized he was not getting any reimbursement for paying the utilities for the entire house. He talked to the other tenants and realized their utilities were included in their tenancy agreement. He then began to request reimbursement from the landlord but his requests were ignored and he was repeatedly told to move if he wasn't happy with the arrangement. The tenant submitted summaries of the amounts he has paid for Hydro and Gas since approximately the beginning of the tenancy. The tenant submits that he did not agree to pay for the other tenant utilities and argues that the term in the agreement requiring him to do so is unconscionable. The tenant also submitted a previous Residential Tenancy Branch decision on the issue of shared utilities in support of his argument.

The landlord testified that the tenant entered into a tenancy agreement by which he agreed to pay the utilities for the entire house. The landlord submits that the tenant was offered a lower rent for agreeing to his arrangement. The landlord testified the rental unit was initially advertised for \$1350 per month but he was offered a rent of \$1250 per month which is why he agreed to the arrangement. The landlord further submits that the tenant was well aware that the lower portion of the house was occupied by other tenants at the time of entering into the agreement. The tenant was introduced to the other tenants at the beginning of the tenancy. The tenant knowingly entered into the tenancy agreement. The landlord further submits the tenant has been paying the full utilities without complaint for the entire period of his tenancy. The landlord testified that

the tenant only started to complain about the arrangement just prior to the filing of this application.

Analysis

Pursuant to Section 6(3) of the Act, 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.

Section 3 of the *Residential Tenancy Regulation* (the “Regulation”) defines the term “unconscionable” as follows:

“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.” [My emphasis underlined]

Residential Tenancy Branch Policy Guideline 1: *Landlord & Tenant – Responsibilities for Residential Premises* (“PG #1”), provides policy statements with respect to shared utility services, as follows:

SHARED UTILITY SERVICE

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.

Residential Tenancy Policy Guideline 8: *Unconscionable and Material Terms* (“PG #8”) also provides policy statements with respect to unconscionable terms. It provides:

UNCONSCIONABLE TERMS

Under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

Terms that are unconscionable are not enforceable. Whether a term is unconscionable depends upon a variety of factors.

A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage. Exploiting the age, infirmity or mental weakness of a party may be important factors. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.

The burden of proving a term is unconscionable is upon the party alleging unconscionability.

[My emphasis underlined]

First, I find that PG #1 does not apply to this case. As indicated by the subheading Shared Utility Services, I find this guideline speaks to specific cases in which the cost of utilities is shared amongst tenants under separate tenancy agreements with the landlord. I find that in the case at hand the cost of utilities were not shared as only the upstairs tenant was required under the tenancy agreement to pay for utilities. The utilities were included in the tenancy agreement for the tenants residing in the lower portion of the home, as such, the utilities were not “shared”. Similarly, I find the sample decision submitted by the tenant does not apply to the case at hand as that decision dealt with a case in which the cost of the utilities was “shared” amongst tenants with separate tenancy agreements. The Arbitrator found it was unconscionable to require one of the tenant’s to have the entire utilities bill in his or her name since the other tenant was also responsible to pay his or her share of the utilities.

This brings me to whether or not the second clause of the tenancy agreement was unconscionable as defined under the Regulation making the clause unenforceable under the Act.

In keeping with PG #8, the tenant bears the burden to prove the term requiring him to pay 100% of the utilities for the entire house is unconscionable in the circumstances.

It was not disputed that the tenant agreed to a signed the tenancy agreement and addendum which stipulated that electricity and heat were not included in the rent and that the tenant himself would be responsible for paying utilities for the entire house. It was also not disputed that at the time of entering into the tenancy agreement, the tenant was aware that the lower portion of the house was occupied by another couple. It was also not disputed that the utilities bill has been in the tenant's name since the beginning of the tenancy and the tenant has been paying the full share since which is just under a four year period.

I find that the clause requiring the tenant to be responsible for 100% of the utilities for the entire house to be very clear and not ambiguous. It states the tenant is responsible for 100% of the utilities versus just being requested to put the utilities in his name as alleged by the tenant. I find the tenant knowingly agreed to this term at the outset of the tenancy and therefore cannot claim to be unfairly surprised approximately four years after the fact. I do not find the tenant's claim that he has been questioning this arrangement since seven months into the tenancy to be credible or probable. If he truly was expecting the other tenants to be paying a share of the utilities, I would expect that he would have noticed this much sooner than seven months into the tenancy. Even then, the tenant did not file this dispute application until approximately four years after the fact and has continued to pay 100% of the utilities for this entire period. Additionally I do not find the requirement for the tenant to pay 100% of the utilities to be so one-sided and oppressive to the tenant. Rather, I accept the landlord's testimony that the parties negotiated and agreed to the \$1250.00 monthly rent amount taking into account the requirement for the tenant to pay 100% utilities. Given that the upstairs is occupied by four persons versus two persons occupying the downstairs and the upstairs is a much larger area as compared to the lower portion, I find the tenant agreeing to pay 100% of the utilities in exchange for a lower monthly rent to be probable given the circumstances.

I dismiss the tenant's claim that the requirement for him to pay 100% of the utilities for the entire house is unconscionable and unenforceable. I do not find that this clause to be oppressive or grossly unfair.

As I have found the landlord to be in compliance I make no orders for the landlord to comply with the Act, Regulation or tenancy agreement.

As the tenant was not successful in this application, the tenant is not entitled to recover the filing fee paid for this application.

Conclusion

The tenant's application is dismissed 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: May 07, 2018

Residential Tenancy Branch