



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNDC, MNSD, CNR, MNSD, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On June 7, 2018, the Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenants also applied for compensation for money owed or damage or loss, and for the Landlord to comply with the Act, Regulation, or tenancy agreement.

On July 8, 2018, the Landlord applied for an order of possession for the rental unit based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord is also seeking compensation for money owed or damage or loss.

The matter was set for a conference call hearing. 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 parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an

Arbitrator may decline to hear other claims that have been included in the applications and the Arbitrator may dismiss such matters with or without leave to reapply.

The parties were informed that this hearing will proceed on whether or not the tenancy is ending due to a failure to pay a utility amount of \$45.96 owing under the tenancy agreement.

The Parties have leave to reapply for their other claims at a later date.

Issue to be Decided

- Is the Landlord entitled to an order of possession due to non-payment of rent or utilities?

Background and Evidence

The parties testified that the tenancy began on June 16, 2017, as a one year fixed term tenancy. Rent in the amount of \$1,600.00 is to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$800.00. Both parties provided a copy of a tenancy agreement that indicates that the rent includes heat, electricity, and natural or propane gas.

The Tenants are renting a two bedroom self-contained unit in a house situated above a three bedroom rental unit below. The Landlord testified that the rental units have the same square footage.

Despite the tenancy agreement that indicates the rent includes heat, electricity, and natural or propane gas, the Tenants testified that the agreement was that the Tenants would not have to pay for utilities until the Landlord installs separate meter.

The Tenant testified that on June 17, 2018, she put the gas utility into her name because the Landlord told her that she had her own meter. The Tenant testified that the hydro (electric) utility stayed in the Landlords name.

The Landlord testified that because the contract is unclear on whether utilities are included she took time explaining to the Tenants that they are responsible to put the gas utility in their name and pay the gas bills. The Landlord testified that the Tenants put the gas utility in their name and paid nine consecutive gas bills.

The Landlord testified that the rental unit below the Tenants unit was empty but undergoing renovations. The Landlord testified that the lower unit was rented to Tenants who moved into the lower unit on April 2, 2018.

The Landlord testified that the Tenants requested the Landlord to put the gas utility into the Landlords name. On March 15, 2018, the Landlord notified the Tenants that the Landlord was putting the gas utility into the Landlords name and that the Tenants will have to pay 50% of the gas bill. The Landlord testified that the Tenants never replied to the letter; but never rejected it either.

The Landlord testified that on April 24, 2018, they emailed the Tenants with a 30 day demand letter for payment of the gas utility. The Landlord testified that the gas bill includes a period of time that occupants were living in the unit below.

The Landlord testified that when the Tenants did not pay the amount owing for the gas utility, the Landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 4, 2018.

10 Day Notice

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 4, 2018. The Notice indicates the Tennats have failed to pay utilities in the amount of \$45.96 following written demand on April 24, 2018.

The 10 Day Notice informed the Tenant that the Notice would be cancelled if the utilities are paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Tenants disputed the 1 Month Notice on June 7, 2018, within the required timeframe.

Analysis

Section 46(6) of the Act provides that if a tenancy agreement requires the Tenant to pay utility charges to the Landlord, and the utility charges are unpaid more than 30 days after the Tenant is given a written demand for payment of them, the Landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

Section 14 of the Act provides that 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.

Section 1(2) of the Residential Tenancy Regulation schedule provides that any change or addition to a tenancy agreement must be agreed to in writing and initialed by both the

Landlord and the Tenant. If a change is not agreed to in writing, is not initialed by both the Landlord and the Tenant, or is unconscionable, it is not enforceable.

Residential Tenancy Branch Policy Guideline # 1 contains information regarding shared utility service. The Guideline provides:

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.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I find that the parties entered into a verbal agreement at the start of the tenancy to amend the term of the tenancy agreement for the Tenants to pay for the gas utility.

I find that the parties agreed to change the gas utility into the Landlord's name around the time the lower unit was to be occupied and the gas used by both units.

I find that it would be unconscionable for the Tenants to pay for the gas that is being used by a premises they do not occupy.

I find that there is no agreement between the parties on how the cost of the gas utility used by the upper and lower rental units will be shared. The tenancy agreement is silent on how these utility costs will be shared. I find that the Landlord cannot unilaterally determine the amount the Tenants will pay and apply that change as a term of the tenancy agreement.

I find that because the tenancy agreement is silent on shared utilities and since there was no agreement reached by the parties on how the gas utility costs will be shared, the Landlord has failed to establish that the Tenants owe the amount of \$45.96 as indicated within the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 4, 2018.

If the parties could not reach an agreement on the issue, the Landlord could have applied for dispute resolution for an Arbitrator to decide the matter prior to the Landlord unilaterally determining the amount and issuing a notice to end tenancy.

I set aside the Landlords 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 4, 2018.

The tenancy will continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenants were successful with their application to set aside the 10 Day Notice. I authorize the Tenants to deduct the amount of \$100.00 from one (1) future rent payment.

Conclusion

The Tenants' application is successful. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 4, 2018, is cancelled.

The parties are at liberty to reapply for their claims that were 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: August 8, 2018

Residential Tenancy Branch