



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KEKINOW NATIVE HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDC, FFT

Introduction

On June 12, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) asking that the Landlord comply with the Act, Regulation, or Tenancy Agreement and requesting money owed or compensation for damage or loss.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The parties confirmed that they have exchanged the documentary evidence that I have before me. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to 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

At the start of the hearing the Tenant withdrew her claim to dispute the amount of monthly rent she owes.

The hearing proceeded on the Tenants claim regarding an overpayment of utilities.

Issues to be Decided

- Is the Tenant obligated under the tenancy agreement to pay for hydro utilities and is the Tenant entitled to recover compensation for an over payment of utilities?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on September 1, 2016, and is on a month to month basis. Subsidized rent geared to income is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$500.00.

The Tenant testified that on October 2017, the Landlord informed her that she had to start paying the amount of \$60.00 each month for the cost of utilities.

The Tenant testified that she paid the Landlord because she did not want to risk being evicted; however she did not agree that she should have to pay for utilities and she never signed any agreement to pay for utilities.

The Tenant testified that that her tenancy agreement provides that the rent includes the cost of utilities. She testified that she was never asked to pay and never paid any amount for hydro utilities prior to October 2017.

The Tenant testified that she sent a letter to the Landlord and raised the issue, but did not receive a response. The Tenant then applied for dispute resolution.

The Tenant testified that she has paid \$645.00 for utilities since October 2017.

In reply, the Landlord testified that they started charging Tenants for electricity starting January 1, 2017. She testified that a decision was made to start recouping these costs.

The Landlord pointed out that the tenancy agreement lists the items that are included in the rent and rent does not include hydro costs.

The Landlord testified that rent and hydro are separate. She testified that the Tenants rent is now \$720.00 per month which is comprised of \$660.00 in rent and \$60.00 for hydro.

Analysis

Section 6(3) of the Act provides the following regarding enforcing rights and obligations of Landlords and Tenants:

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 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.

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

With respect to the tenancy agreement regarding payment of rent, I have reviewed the agreement. Term 6(i) of the tenancy agreement provides that the Tenant must pay the rent and any excess electricity consumption (which forms a part of the rent) to the Landlord in full and on time. Payment of rent in full and on time, including any excess electricity consumption constitutes a material term of this agreement.

Term 6 (h) of the tenancy agreement related to the calculation and payment of excessive electricity consumption is crossed out.

I find that the tenancy agreement does not specify that electricity is included in the rent. However, I find that the agreement does not provide any terms regarding the payment of electricity other than excess electricity consumption. The terms for determining excessive electricity consumption and notification of the amount the Tenant owes and when payment must be made are crossed out. I find that term 6(h) of the agreement is not a term of the agreement between the parties.

I find that there was no agreement that the Tenant would pay \$60.00 each month for the cost of hydro utilities. I find that the tenancy agreement is not sufficiently clear on the Tenant's obligation to pay for hydroelectricity.

After considering that the Landlord did not charge the Tenant any hydro costs for 13 months, and due to the lack of clarity in the agreement regarding agreement on the requirement to pay the utility and how the amount is determined, I find that a

requirement to pay hydro costs is not expressed in a manner that clearly communicates the rights and obligations under it.

I find that the Tenant is not required to pay for the hydro utility costs.

Based on my finding that the Tenant is not required under the tenancy agreement to pay for hydro costs, I find that the Tenant is entitled to recover the amount of the hydro payments.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order against the Landlord in the amount of \$745.00 comprised of the overpayment of utilities and the filing fee.

Conclusion

I find that a requirement to pay hydro costs is not expressed in a manner that clearly communicates the rights and obligations under it. I find that the Tenant is not required to pay for the hydro utility costs.

I grant the Tenant a monetary order against the Landlord in the amount of \$745.00 comprised of an overpayment of utilities and the filing fee.

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 15, 2018

Residential Tenancy Branch