



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, FFT

Introduction

On July 22, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting an Order for the Landlord to comply with the Act or tenancy agreement, an Order for the Landlord to provide a service or facility as required by the tenancy agreement of the law, and to recover the filing fee for their application. The matter was set for a conference call.

The Landlord, the Landlord’s counsel, and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have 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 Matter

At the outset of this hearing, both parties agreed that there were no services or facilities that the Landlord was not providing for this tenancy. However, there is a disagreement between these parties regarding the electricity and heating bills for this tenancy.

Both parties requested that a determination is made on to what percentage of the electricity and heating bills are the Tenants responsibility to pay.

I will proceed in this hearing on the verbal amendment request of both parties to determine what percentage of the electricity and heating bills (the utilities) are the responsibility of the Tenants to pay under this tenancy agreement.

Issues to be Decided

- What percentage of the electricity and heating bills are the Tenants required to pay pursuant to the tenancy agreement?
- Are the Tenants entitled to recover the filing fee for his application?

Background and Evidence

Both parties agreed that the tenancy began on March 1, 2015, as a one-year fixed term tenancy, that rolled into a month to month at the end of the fixed term. Rent in the amount of \$1,768.00 is to be paid by the first day of each month and the Landlord collected a security deposit of \$800.00 at the outset of this tenancy. Both parties provided a copy of the tenancy agreement into documentary evidence.

Both parties agreed that the utilities are not included in the tenancy agreement and that the Tenants are required to pay a percentage of the utilities each month. The parties also agreed that the Landlord has maintained these bills in her name since the outset of the tenancy. The parties all agreed that the percentage of utilities had not been included in the tenancy agreement.

The Tenants testified that when they received the first utility bill for this tenancy, back in May 2015, the occupants of the downstairs unit had agreed to pay 60% of the utilities. The Tenant testified that they have only ever paid 40% of the utilities for this tenancy.

The Landlord testified that her original advertisement for this tenancy had stated that the Tenants would be responsible for a 50/50 split of the utilities for this tenancy. The Landlord provided two copies of her original ad for this tenancy into documentary evidence.

The Landlord testified that she received a request from the occupant of the downstairs unit to reduce the percentage of the utilities that he has to pay from 60% to either 50 or 40%. The Landlord testified that she believed the request to be fair as the number of

people living in the downstairs unit had been reduced from four to two and that the Tenants had a larger space in the upstairs rental unit and were, therefore, using more utilities and should pay more.

Analysis

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

Section 6(3) of the *Act* provides that a term of a tenancy agreement is not enforceable if, the term is not expressed in a manner that clearly communicates the rights and obligation under it.

Enforcing rights and obligations of landlords and tenants

6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58

(1) [*determining disputes*].

(3) 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.

I have carefully reviewed the tenancy agreements entered into by these parties, and I find that the written agreement clearly states that electricity and heat are not included in the rent. However, I find that the Landlord is running two separate rental units off the same meters for electricity and heat.

As it is the Landlords responsibility to draw up the tenancy agreement, I find that she bore the obligation to ensure that the terms therein were certain, and the obligation of the parties was well-defined. After careful review of the tenancy agreement, I find there is nowhere in the tenancy agreement that defines what percentages of utilities are assigned to this tenancy. Given that this building has more than one rental unit and that the utility bills are for the whole building and not just for the Tenant's rental unit, I find that it would be unreasonable to expect that the Tenants should know what percentage

they were responsible for paying without it being clearly defined in the tenancy agreement. I find that pursuant to the rule of *contra proferentem*, the ambiguity in this term must be resolved against the Landlord whose responsibility it was to draft the tenancy agreement.

In the absence of a clearly defined tenancy agreement, I must rely on the agreed upon testimony, between these parties, as to what has been the terms of this tenancy regarding the payment of the electricity and heating bills.

I accept the testimony of both parties that since the outset of this tenancy the Landlord has maintained the electricity and heating bills in her own name and billed directly to these Tenants and the occupant of the basement rental unit. I also accept the agreed upon testimony of these parties that over the past three years of the Tenants have paid 40% of the electricity and heating bill they received from the Landlord and that the Landlord has accepted this payment from them. I find that the failure of the Landlord to communicate any disagreement with the Tenants only paying 40% the utility bills over the last three years, has provided implied consent and created a mutual assumption between both parties regarding the terms of the utility split for this tenancy agreement, even if verbal or written consent had not been given by the Landlord.

Furthermore, I find that the Landlord failure to insist upon at 50/50 split, as indicated in her advertisement, of the utility payments for this tenancy amounts to estoppel by conduct. I find that the Landlord gave the Tenant the impression, for the past three years, that they were responsible for 40% of the utility bills for their tenancy.

For the above reasons, I find that the Tenants are responsible for 40% of the utilities for this tenancy.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants may deduct the \$100.00 fee for this application from the next month's rent.

Conclusion

I find that the Tenants are responsible for 40% of the utilities of this tenancy.

I authorized the Tenants to take a onetime rent reduction of \$100.00 from a future month's rent payable to the Landlord, to recover the cost of the filing fee from the Landlord.

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: October 5, 2018

Residential Tenancy Branch