



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFL MNDL-S

Introduction

This hearing dealt with applications from both the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*).

The landlords applied for a monetary award for damage and loss pursuant to section 67 and authorization to recover the filing fee pursuant to section 72.

The tenants applied for a monetary award for damage and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that they served their application of September 10, 2018 by registered mail on the tenant. The tenant disputed being served with the landlord's application. The landlord was unable to provide a Canada Post tracking number as evidence of service.

The tenant testified that they served their application of October 4, 2018 and evidence on the landlord. The landlord confirmed receipt of the tenant's materials. The landlord testified that they served the tenant with evidence in response and the tenant confirmed receipt of the landlord's evidence package. Based on the testimonies I find that the landlord was served with the tenant's application package in accordance with sections 88 and 89 of the Act and that the tenant was served with the landlord's evidence in accordance with section 88 of the Act.

At the outset of the hearing the tenant made an application requesting to amend the monetary amount of their claim. The tenant said that the figure written in their

application is incorrect. As I find that correcting a typographic error is reasonably foreseeable and does not prejudice the other party, in accordance with section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure, I allow the tenant to decrease the monetary claim from \$7,560.00 to \$7,300.00.

Preliminary Issue – Service of Landlord's Application

Section 59(3) of the Act and Rule 3.1 of the Rules of Procedure establishes that a person who makes an application for dispute resolution must give a copy of the application to the other party.

Section 89(1) provides the manner by which an application for dispute resolution for a monetary award may be served. While registered mail is a permitted method of service the tenant disputes that they were served with the landlord's application and materials. The landlord was unable to provide a Canada Post tracking number as evidence to support their submission that the tenant was served.

Based on the evidence I am not satisfied that the tenant has been served in accordance with the Act. I find that there is insufficient evidence in support of the landlord's submission that they served the tenants by registered mail. Consequently, I find that the landlords have not met their evidentiary burden and I dismiss the landlord's application without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed

Background and Evidence

The parties agreed on the following facts. This tenancy began in 2009 and ended in 2018. The monthly rent was \$1,950.00 payable on the first of the month at the end of the tenancy. The rental unit is the main floor of a detached home and the basement suite was occupied by other residents.

The parties entered into several fixed term tenancies throughout the tenant's residence. Some of the tenancy agreements were submitted into evidence. Each of the tenancy agreements provides that utilities are not included in the rent.

The tenant submits that they were paying the utilities for the whole rental building throughout their tenancy. The tenant said that throughout the course of the tenancy they paid the full amount of utilities for the rental building including the portion of the building occupied by other residents. The tenant testified that they were aware that they were paying the full utilities for the building but did not believe this to be an issue until they were moving out of the rental suite. The tenant now believes that this was an unconscionable term in the tenancy agreement and they seek a refund of their overpayment throughout the tenancy in the amount of \$7,300.00. The tenant has submitted as part of their evidence some of the invoices for utilities paid and their calculation as to what they believe is the average overpayment over the course of the tenancy.

The landlord testified that the tenancy agreement entered into by the parties clearly states that utilities are the responsibility of the tenant. The landlord said that there is only one meter for the electricity in the building. The landlord said that while the tenant paid the utilities for the entire rental building they enjoyed other benefits such as below market rent for the suite at a fixed rate for several years during the tenancy.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

Residential Tenancy Policy Guideline 8 defines an unconscionable term as one that is oppressive or grossly unfair to one party. A term in a tenancy agreement that is unconscionable is unenforceable. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.

In the present case the parties agree that under the tenancy agreement, the rent does not include the utilities. The tenant submits that they placed all utilities under their name as they understood that they were responsible for payment of the utilities. The tenant

said that they took no issue with payment of the utilities until the tenancy ended and received advice that they should not have been paying the full amount for the rental building.

I do not find that the payment of utilities was so one-sided an agreement as to be unconscionable as set out above. The tenancy agreement simply provides that utilities are not included in the monthly rent. There was no obligation that the tenant must pay the full utilities for the building. Even if the lack of a second electricity meter meant that only one name could be placed on the account for the building, the tenant could have simply requested reimbursement from the other resident.

The evidence submitted shows that prior to entering into a tenancy agreement there was discussion between the parties on such issues as the amount of the monthly rent and repairs to be performed. I find that the parties were at liberty to discuss the payment of utilities.

Based on the evidence I find that the tenancy agreement does not require the tenant to pay the full utilities for the building but simply provides that electricity and heat are not included in the monthly rent. I accept the evidence that the tenant paid the full utilities for the building. I do not find that the tenant was under any obligation to do so under the tenancy agreement. Furthermore, I find that the tenant was at liberty throughout the decade long tenancy to seek reimbursement from the residents of the other suite or raise the issue with the landlord but did not take any action. I find that any overpayment of utility bills is not a loss attributable to the landlord but a result of the tenant's own actions. Accordingly, I find that the tenant cannot pay the utilities for the rental building throughout the tenancy without question when it was not required that they do so under the written tenancy agreement, and subsequently claim a loss for the payment they made.

I find that the tenant has not shown that there has been a loss as a result of a violation by the landlord and I consequently dismiss the tenants claim.

Conclusion

The landlords' application is dismissed without leave to reapply.

The tenants' 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: January 14, 2019

Residential Tenancy Branch