



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1024028 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$434.98 pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:26 am in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 am. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

On April 18, 2019, the tenant obtained an order from the Residential Tenancy Branch that the landlord may be served substitutionally as follows:

The tenant may serve the landlord the Application for Dispute Resolution, with supporting documents and written evidence, along with a copy of this substituted service decision, to the landlord by text message as set out above.

The tenant testified that he served the landlord with the notice of dispute resolution form, supporting evidence package, and a copy of the substituted service decision in accordance with the order on April 18, 2019.

As such, I find that the landlord has been served in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- 1) an order that the landlord comply with section 6(3) of the Act, and strike out an unconscionable term of the tenancy agreement;
- 2) a monetary order representing the repayment of half the utilities the tenant has paid between January to March 2019; and
- 3) recover his filing fee for this application?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified that the parties entered into a written tenancy agreement starting October 1, 2014. Monthly rent is \$1,600.00, excluding utilities. The tenant paid the landlord a security deposit of \$800.00. The landlord still retains this deposit. The tenant did not submit a copy of the tenancy agreement into evidence.

The rental unit is the upper level of a single detached home. The lower level is a unit available for rent. The tenant testified that, in December 2018, the tenant occupying the lower level moved out. The lower level remains vacant.

The tenant testified that:

- The landlord requires that the utility bills for the rental property (that is, both the lower and upper level rental units) be in the tenant's name.
- It is his responsibility to collect 50% of the utilities bill from the occupant of the lower level unit.
- There is only one thermostat for the entire rental property, so it is not possible to heat the upper rental unit without also heating the lower unit.
- Since the lower unit tenant moved out:

- the tenant has been paying the utilities bills (BC Hydro and Fortis) for the entire rental property in the combined amount of \$869.97;
- the landlord has arranged for workers to enter the lower unit to do renovations or repairs, for roughly two weeks; and
- the landlord has arranged for roughly fifteen separate viewings of the lower unit.

The tenant argued that the requirement that the utilities for the entire rental property be in his name is unconscionable, as it requires that he pay for services for which he is not obtaining the benefit. The tenant seeks an order that the landlord reimburse him 50% of the cost of the utilities for the period of time between January and March 2019 (\$434.98) and for an order that the landlord put the utilities in its own name.

Analysis

Section 6(3)(b) of the Act states:

Enforcing rights and obligations of landlords and tenants

6(3) A term of a tenancy agreement is not enforceable if

[...]

(b) the term is unconscionable, or

[...]

Policy Guideline 1 states:

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.

I accept the tenant's undisputed testimony that the utilities bills for the entire rental property are in his name. I also accept that during the period of time between January and March 2019, the tenant was being billed for the provision of utilities to the lower unit, and the consumption of those utilities by the lower unit was beyond his control (landlord's workers or agent in the lower unit, using power, and it is impossible to heat only the upper unit). As such, I find that the requirement that the utilities bills be in the tenants name to be unconscionable.

I find that the requirement is therefore unenforceable, per section 6(3)(b) of the Act. As such, I order that the landlord do everything that is reasonably necessary to put the

utilities (BC Hydro and Fortis) in its name. I order that the tenant do everything that is reasonably necessary to give effect to this order.

Additionally, I order that the landlord pay the tenant \$434.98, representing 50% of the amount of utilities that the tenant has paid during the time the lower unit has been vacant.

As the tenant has been successful in his application, I order that he may recover the filing fee for this application (\$100.00) from the landlord.

Pursuant to section 72(2), I order that the tenant may withhold \$534.98 from June 2019's rent payment to the landlord. As such, I will not issue a monetary order for this amount.

Conclusion

Pursuant to section 67 and 72 of I order that the tenant may withhold \$534.98 from June 2019's monthly rent he is to pay to the landlord.

Pursuant to sections 6 and 62 of the Act, I order that the landlord do everything that is reasonably necessary to put the utilities (BC Hydro and Fortis) in its name.

Pursuant to section 62 of the Act, I order that the tenant do everything that is reasonably necessary to give effect to my order that the landlord put the utilities in its name.

Pursuant to section 71 of the Act, I order that the tenant serve a copy of this decision on the landlord in the same manner as set out in the April 18, 2019 decision regarding substituted service.

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 21, 2019

Residential Tenancy Branch