



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **DRI FFT MNDCT OLC RP**

Introduction

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

- An order to dispute a rent increase pursuant to section 41;
- Authorization to recover the filing fees from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62; and
- An order for regular repairs to be done to the rental unit pursuant to section 32.

Both parties attended the hearing. The tenants were both present, along with an agent/translator, RA ("tenant"). The landlord was present, along with an agent/translator, BN ("landlord").

Preliminary Issue

Both parties deny receiving evidence from the other side. The tenants testified they served the landlord with the Notice of Dispute Resolution Proceedings by registered mail on May 6, 2019 and provided a tracking number which is recorded on the cover page of this decision. The landlord testified the evidence was personally given to the tenants by her niece last Thursday or Friday. During the hearing, I advised the parties that my decision would be based solely on the testimony of the parties as I was not satisfied either party was served with documentary evidence.

Despite this, I consider the original tenancy agreement, submitted by each of the parties shall be admitted. Both sides are in possession of this document and neither the landlord or the tenant would be prejudiced by me reviewing it in order to make an informed, factual decision.

Settlement

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a partial resolution of their dispute.

Both parties agreed to the following final and binding settlement of the following issues currently under dispute at this time.

1. The landlord agrees to pay the tenant \$400.00 for the increased rent in 2018. The tenant is at liberty to deduct \$400.00 from the July 2019 rent.
2. The landlord agrees to send her spouse to the rental unit to inspect the dishwasher and determine if it requires repairs.
3. The parties agree that the rent is now \$1,435.00 per month, retroactive to February 2019.
4. The parties agree to have a mutually agreed upon exterminator come to the rental unit to exterminate the mice on a mutually agreeable date. The tenants agree to provide the landlord with a date for the exterminator to come, at least 2 weeks in advance of their vacation. The landlord agrees to pay for the extermination. Should the exterminator require the furniture be moved out or covered in plastic, the tenants agree to do either option.
5. The issues of the filing fee and whether the tenants are responsible for the natural gas utility is to be left to the arbitrator to decide.

Both parties testified that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle these aspects of this dispute.

The issues of whether the tenant is required to pay half the utilities of natural gas and the filing fee is to be determined by the arbitrator. Both parties agree that the arbitrator's decision on these matters are legal, final and binding upon all parties.

Issue(s) to be Decided

Should the tenants be required to pay for the natural gas utility?

Should the tenants be reimbursed the filing fee for this application?

Background and Evidence

The rental unit is located in a house with an upper and lower unit. The tenants live in the upper unit.

A copy of the tenancy agreement was submitted by both the landlord and the tenant. The tenancy began on February 13, 2017 with rent set at \$1,400.00 per month. A security deposit of \$700.00 was collected by the landlord which she continues to hold. The signed tenancy agreement does not indicate whether the tenants pay for natural gas or heating of the rental unit.

The tenants submit that they rented the unit after responding to an online advertisement. According to the tenants, the rent was advertised at \$1,300.00 per month and they agreed to the rent of \$1,400.00 per month so that natural gas would be included in the rent. No copy of the advertisement was provided as evidence.

The tenants testified that in November of 2018, the landlord 'bullied' them into signing an addendum to the tenancy agreement which says they are to pay half the natural gas for the home. They also claim that their inability to communicate in English led to a misunderstanding about what they signed. The tenants submit that they were afraid they would get evicted if they refused to sign the document.

The landlord testified that the stove in the tenant's unit is powered by natural gas and the stove in the lower unit is powered by electricity. The tenants in the upper unit use more natural gas than the occupants in the lower unit and should pay a proportional share of the utility. The landlord served the tenants with the addendum for them to start paying for half the natural gas on November 1, 2018. The landlord paid for the natural gas between the commencement of the tenancy and November 1st as goodwill towards the tenants.

The landlord submits the tenants signed the document freely and without coercion. The tenants did not protest signing the document on the day it was presented to them. There was no dispute from the tenants and the landlord did not 'bully' the tenants into signing it.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

The tenants filed an application pursuant to section 62 of the Act that the landlord comply with the Act, regulations or tenancy agreement. While the tenants application originally sought that the landlord 'stop bullying them', I find there is no basis in the legislation to make such an order. This portion of the tenants' claim is dismissed.

Pursuant to section 62(2) of the *Act*, the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. The parties before me seek a finding as to whether the tenants are responsible for paying the natural gas for their rental unit. I have accepted this joint application to determine that finding.

The tenants claim the rent was set at \$1,400.00 despite being advertised at \$1,300.00 initially. The increased rent was to account for the natural gas. The tenants were unable to corroborate this with any documentary evidence and no copy of the advertisement was submitted for me to consider. In the absence of any evidence to substantiate this argument, I find the tenants' argument unsuccessful.

The parties both acknowledge the tenants signed the addendum to the tenancy agreement on or about November 1, 2018 which indicates the tenants would pay half the natural gas. In dispute is whether the tenants should be bound by the addendum.

First, the tenants testified they were threatened and intimidated into signing the agreement. This is analogous to the claim of 'duress'. If the tenant could establish duress, a contractual basis for rescission would be established. That is, establishing duress would release the tenant from the second agreement.

I have considered whether the tenants protested during the signing of the document; whether, at the time they entered into the contract, they were denied the opportunity to seek independent advice or counsel. I considered whether they asked the landlord to leave it with them to read over or take it to a friend or trusted person to explain it to them. I do not have any evidence before me that they chose this course of action. In considering the testimony of both the landlord and the tenant, I find the oral evidence supports the landlord's version that the tenants freely entered into the second agreement to pay half the natural gas. While the tenants may feel remorse for having entered into the second agreement to pay for the natural gas; in the absence of corroborating evidence to establish it, I find the tenants were not threatened with coercion or duress to sign the document. I find the tenants' claim of duress fails.

Second, the tenants claim their inability to understand English is a second reason to repudiate the second agreement. As stated previously, the tenants had the opportunity to take the document to someone who could translate it for them but did not. As they signed the agreement to pay for half the natural gas, I find the tenants are responsible for this utility.

Pursuant to section 62(2) of the *Act*, I made the following finding. I find the addendum to the tenancy agreement signed on November 1, 2018 whereby the tenants agree to pay half the natural gas for the property is valid. I order that the tenants are responsible for paying one half the natural gas utility when the invoices are presented to them for payment by the landlord in accordance with section 62(3) of the *Act*.

Filing fee

The tenants were successful in some aspects of their application, unsuccessful in others. I find neither the tenants nor the landlord should be ordered to bear the full cost of the filing fee. The tenants are entitled to recover one half the filing fee, or \$50.00 from the landlord.

Conclusion

1. The landlord agrees to pay the tenant \$400.00 for the increased rent in 2018. The tenant is at liberty to deduct a total of **\$450.00** from the July 2019 rent, which includes the filing fee for the application for dispute resolution.
2. The landlord agrees to send her spouse to the rental unit to inspect the dishwasher and determine if it requires repairs.
3. The parties agree that the rent is now \$1,435.00 per month, retroactive to February 2019.
4. The parties agree to have a mutually agreed upon exterminator come to the rental unit to exterminate the mice on a mutually agreeable date. The tenants agree to provide the landlord with a date for the exterminator to come, at least 2 weeks in advance of their vacation. The landlord agrees to pay for the extermination. Should the exterminator require the furniture be moved out or covered in plastic, the tenants agree to do either option.
5. The tenants are to pay half the natural gas utility when the invoices are presented to them for payment by the landlord in accordance with section 62(3) of the *Act*.

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: June 13, 2019

Residential Tenancy Branch