



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, OT

Introduction

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

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- other tenant issues for dispute.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:11 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. The tenants attended the hearing and were 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 tenants and I were the only ones who had called into this teleconference.

The tenants testified that the landlord was personally served with their application for dispute resolution shortly after July 19, 2019, though they could not recall on what date. Based on the undisputed evidence of the tenants, I find that the landlord was served with the tenants' application for dispute resolution in accordance with section 89 of the *Act*.

The tenants testified that they personally served the landlord's agent with their first amendment sometime in August 2019 but could not recall the specific date. Based on the undisputed evidence of the tenants, I find that the landlord was served with the tenants' first amendment in accordance with section 88 of the *Act*.

The tenants testified that they posted their second amendment on the landlord's door on September 6, 2019. Based on the undisputed evidence of the tenants, I find that the landlord was served with the tenants' second amendment in accordance with section 88 of the *Act*.

Issues to be Decided

1. Are the tenants entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
2. Are the tenants entitled to other Orders under the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both tenants, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The tenants provided the following undisputed testimony. This tenancy began on June 1, 2018 and is currently ongoing. Monthly rent in the amount of \$1,800.00 is payable on the first day of each month. A security deposit of \$900.00 was paid by the tenant to the landlord. The subject rental property is a house divided into an upper and lower suite. The tenants reside in the upper suite and other tenants reside in the lower suite.

Utilities

The tenants testified that the utilities for the entire house are in their name. The tenants testified that the landlord has instructed them to sort out payment of the utilities between themselves and the lower unit. The tenants testified that this has been highly problematic because the lower tenants frequently don't pay for their portion of the utility bills or pay less than 50% of the bill.

The tenants testified that they are seeking an Order that either the lower tenants must pay them 50% of the utility bill or that the utilities are put in the landlord's name so that the tenants can pay the landlord for their share.

Bedbugs

The tenants testified that they found bug beds in the subject rental property on August 7, 2019 and notified the landlord's agent the same day. The tenants testified that they believe the bedbugs came from the children's bed the landlord gave them. The tenants testified that the subject rental property had a bedbug problem before they moved in and the landlord failed to disclose this.

The tenants testified that the landlord had the subject rental property treated for bug beds on three occasions between August 22, 2019 and September 13, 2019. The tenants testified that the landlord and or her agent told them that all or a portion of the cost for the bedbug treatment would be taken out of their security deposit. The tenants testified that they are seeking direction as to whether or not the landlord is entitled to do so.

The tenants testified that they are very concerned that the bedbugs will return or have not been fully eradicated. The tenants testified that when the subject rental property was treated the exterminators informed them that follow up testing would be conducted to confirm the effectiveness of the treatment but no follow up testing was conducted. The tenants are seeking an Order that the landlord conduct follow up testing to confirm that the bedbugs have been eradicated.

Analysis

Utilities

Residential Tenancy Policy Guideline #1 states that 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.

If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

Section 3 of the Residential Tenancy Regulation states that for the purposes of section 6(3)(b) of the *Act* [*unenforceable term*], a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

Section 6(3)(b) of the *Act* states that a term of a tenancy agreement is not enforceable if the term is unconscionable.

I find that it is grossly unfair for the tenants to have the utilities for the entire house in their name. I therefore find that the term is unconscionable and unenforceable. Pursuant to section 62 of the *Act*, I Order the landlord to move all utilities into her name as soon as possible but no later than October 31, 2019. If the landlord does not abide by this Order, I find that the tenants are entitled to deduct \$200.00 off their rent for each month that this Order is not obeyed. If this Order is obeyed part way through a given month after October 31, 2019, the tenants are still entitled to deduct \$200.00 from their rent for that month. For example, if the utilities are placed in the landlord's name on November 10, 2019, the tenants would still be entitled to deduct \$200.00 from their rent for the month of November 2019 but would not be entitled to deduct \$200.00 from their December 2019 rent.

Bed Bugs

In this case, the landlords have not made an application to retain a portion of the tenants' security deposit for the cost of bedbug treatment; therefore, I will not make a finding on an application which has not occurred. Nonetheless, I will set out the relevant law for the information of both parties.

Section 32 of the *Act* sets out that a landlord must ensure that the rental property is suitable for occupation and compliant with health, safety and housing standards required by law.

Residential Tenancy Policy Guideline #1 states that the landlord is generally responsible for major projects such as insect control.

Based on the tenants' testimony and documentary evidence, I find that the subject rental property had a bug bed problem which was treated in a reasonable timeline by the landlord. I find that it is also reasonable to have follow testing to confirm that the bedbugs are no longer present. Pursuant to sections 32 and 62 of the *Act*, I Order the

landlord to conduct follow up testing to confirm the effectiveness of the bedbug treatment by October 31, 2019. If the landlord does not comply with this Order, I find that the tenants are entitled to a \$100.00 reduction in rent until the testing is completed. If this Order is obeyed part way through a given month after October 31, 2019, the tenants are still entitled to deduct \$100.00 from their rent for that month. For example, if the testing is conducted on November 5, 2019, the tenants would still be entitled to deduct \$100.00 from their rent for the month of November 2019 but would not be entitled to deduct \$100.00 from their December 2019 rent.

Conclusion

I Order the landlord to move all utilities into her name as soon as possible but no later than October 31, 2019. If the landlord does not abide by this Order, I find that the tenants are entitled to deduct \$200.00 from their rent for each month that this Order is not obeyed.

I Order the landlord to conduct follow up testing to confirm the effectiveness of the bedbug treatment by October 31, 2019. If the landlord does not comply with this Order, I find that the tenants are entitled to deduct \$100.00 from their rent for each month that this Order is not obeyed.

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: September 24, 2019

Residential Tenancy Branch