



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR, MNDC

Introduction

On June 30, 2019, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking the following relief:

- for an order for the Landlord to make repairs to the rental unit.
- to allow the Tenant to deduct the cost of repairs, services or facilities from the rent.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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 and Procedural Matters

At the start of the hearing, the Landlord and Tenant testified that the Tenant moved out of the rental unit on August 15, 2019. The Landlord received an order of possession for the rental unit at an earlier hearing.

Since the tenancy has ended, the Tenants request for a rent reduction and a repair order is no longer required. The hearing proceeded on the Tenant’s request for money

owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

The Tenant provided the dispute address as the address for the Landlord to send disclosure of any evidence; however, the Tenant moved out of the rental unit prior to the hearing. The Tenant updated his address with the Residential Tenancy Branch on September 17, 2019; 10 days before the hearing. The Tenant testified that he also served the Landlord named Maggie with his forwarding address on September 17, 2019.

The Landlord provided the Residential Tenancy Branch with seven pages of documentary evidence. The Landlord testified that they never received a forwarding address from the Tenant. The Landlord testified that there is nobody named Maggie working there. The Landlord testified that they phoned the Tenant on numerous occasions to get his forwarding address, and they also left messages for the Tenant to come pick up the Landlord's documents in person.

The Tenant testified that he did not receive the Landlord's documents.

Since it was the Tenant who applied for dispute resolution, he has to provide the Landlord with an address for disclosure of documents. I find that there is insufficient evidence from the Tenant to prove that he provided the Landlord with his new address. I find that when the Tenant moved out, he failed to provide the Landlord with an address for the disclosure of documents in order for the Landlord to respond to the claims. I find it would be unfair to not accept the Landlords' evidence due to the Tenant's failure to provide the Landlord with an address. Accordingly, the Landlord's documentary evidence is accepted and will be considered.

Issues to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss?

Background and Evidence

The parties testified that the tenancy began on July 1, 2015, on a month to month basis. Rent in the amount of \$705.00 is due on or before the first day of each month. A security deposit of \$200.00 was paid by the Tenant to the Landlord.

The Landlord testified that the Tenant proposed to rent the lower suite of the rental house when the tenancy agreement for the entire home ended. The Landlord testified

that the Tenant agreed to pay all the utilities for both the upper unit and the lower unit in exchange for a reduced monthly rent. The Landlord testified that in addition, the Tenant was permitted to have roommates move into the unit to help pay the costs.

The Landlord testified that the Tenant was paying the hydro and gas costs for both rental units.

The Tenant is seeking the amount of \$1,200.00 for hydro and gas costs which amounts to \$200.00 each month for the months of February to July 2019.

The Tenant was asked to explain how he determined the amount of his claim and he testified that his bills were going up and he just made a mental calculation for the claim amount.

The Tenant testified that there is a two bedroom unit above him and that he is paying the hydro and gas costs for both units.

The Tenant testified that when they were discussing a tenancy, the Landlord approached him and said that one of the occupants living on the property has to pay the hydro. The Tenant testified that he reached a verbal agreement that the occupant living above him would provide him with television and internet service in exchange for the Tenant paying the hydro and gas. The Tenant testified that he paid these utility costs and was not put in a position where he had to collect a portion of the utility costs from the upstairs occupants.

The Tenant testified that the agreement was for free television and internet, not for reduced rent.

The Tenant testified that he raised the issue to the Landlord 2.5 years ago and asked to change the agreement for the utilities to be shared on a 50/50 basis. The Tenant testified that the Landlord would not agree to make a change to the agreement.

The Landlord provided testimony confirming that the Tenant raised the issue to him 2.5 years ago and he complains about the issue every month. The Landlord testified that the Landlord did not agree to make a change to the agreement.

The Landlord Ms. M.G. testified that she was present when the Tenant agreed to put utilities in his name for reduced monthly rent. The Landlord testified that she was not aware of any side agreement the Tenant had with the occupant living above him.

Money Owed or Compensation for Damage or Loss

The Tenant is seeking compensation of \$5,812.74 for a loss of a value in the tenancy due to flooding in the rental unit.

The Tenant testified that in July 2017, he noticed some water in the kitchen and he tried to find the source of the water. He testified that he ran a snake through a kitchen pipe to clear it.

The Tenant testified that in August 2018, he noticed that his kitchen sink was full of water so he reported the issue to the Landlord. The Tenant testified that a plumber attended the rental unit and ran a snake through a pipe and cleared the line.

The Tenant testified that in July 2019, just prior to moving out the sink began to fill up again. The Tenant testified that he reported the issue to the Landlord. The Tenant testified that water was over flowing from the bucket that collects the water discharge from the washing machine. The Tenant testified that when his sink backed up water would flow into the bucket and overflow onto the floor. The Tenant provided five photographs of the bucket and nine photographs of the sink.

The Tenant was asked how he determined the monetary amount of his claim. The Tenant replied that it is based on the aggravation caused to him by the flooding and the utility payment issue. The Tenant did not provide any further explanation on how the amount of his claim was calculated.

In reply, the Landlord testified that the Landlord responded by sending a plumber to the unit on July 11, 2019, August 2, 2019, and August 6, 2019. The Landlord provided the invoices received from the plumber.

The Landlord testified that the Tenant was vindictive and caused the plumbing issues. The Landlord testified that the Tenant was not home for scheduled appointments to let the plumber into the unit. The Landlord testified that the plumber informed the Landlord that the pipes were clogged with bacon grease. In addition, the Landlord testified that the plumber found that a cloth was found stuffed into the pipe clean out under the Tenants sink. The Landlord testified that the cloth was too big to have fit down the drain without force.

The Landlord provided a document from a plumber. The document indicates that on August 21, 2019 the plumber snaked the drain and observed:

"The grease was one of the worst I have ever seen as if bacon grease was repeatedly poured down the drain."

The plumber's document indicates that the plumber attended the unit on September 6, 2019 and observed:

"A cloth came back up that attached itself to the cable....The cloth is way too large to have make it into drain without someone putting it directly into the clean out."

The Landlord provided a photograph of the large cloth that was removed from the pipe.

Analysis

Residential Tenancy Policy Guideline #1 Shared Utility Service provides 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.

Definition of "unconscionable"

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.

Residential Tenancy Policy Guideline #8 Unconscionable and Material Terms provides the following information:

Terms that are unconscionable are not enforceable. Whether a term is unconscionable depends upon a variety of factors. A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage. Exploiting the age, infirmity or mental weakness of a party may be important factors. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party. The burden of proving a term is unconscionable is upon the party alleging unconscionability.

Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides the following information:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *loss of access to any part of the residential property provided under a tenancy agreement;*
- *loss of a service or facility provided under a tenancy agreement;*
- *loss of quiet enjoyment (see Policy Guideline 6);*
- *loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *damage to a person, including both physical and mental.*

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the above, the testimony and evidence before me, and on a balance of probabilities, I make the following findings:

I have considered the definition of unconscionable along with the policy guideline regarding unconscionable and material terms. The Tenant testified that he entered into an agreement with the Landlord where he would pay the utility costs in exchange for a benefit. By the Tenant's own admission he benefitted by receiving free television and internet service each month, and I find it is more likely than not that he also received a benefit by the reduction in his monthly rent in exchange for paying the utilities.

I have considered whether this arrangement was so one-sided as to oppress or unfairly surprise the Tenant. I find that the Tenant was not put in an unfair position where he had to try to collect utilities from another occupant. I find that there was no surprise because the Tenant entered into the agreement knowing the terms of the agreement. I find that when the utility bills increased the Tenant attempted to change the agreement. Terms of a tenancy agreement can only be changed by mutual agreement and I find

that the Landlord was not obligated to agree to make any change. I find that the agreement that was reached was not grossly unfair to the Tenant.

With respect to this claim, I find that the Landlord has not breached the Act, Regulation, or tenancy agreement. The Tenant's claim for compensation in the amount of \$1,200.00 is dismissed without leave to reapply.

Money Owed or Compensation for Damage or Loss

I accept the Tenant's testimony that there was a plumbing issue related to the drainage pipes in July 2017, August 2018, and July 2019. The Tenant did not provide any testimony on how these plumbing issues impacted his use of the rental property.

I find that the Tenant's concerns reported in July 2017, and August 2018 were dealt with promptly without any significant loss to the Tenant.

With respect to the problem noticed by the Tenant in July 2019, I accept the Landlord's documentary evidence that on August 20, 2019, there was a large amount of bacon grease found to be blocking the drain. The Tenant has lived there since July 2015, and there were no reported ongoing issues on a regular or day to day basis, so I find that it is more likely than not that the Tenant is responsible for the blockage.

I also accept the Landlord's documentary evidence that a large cloth was found in the drain clean out under the Tenant's sink. I find that it is more likely than not that the Tenant is responsible for the cloth found in the drain pipe on September 6, 2019.

I find that it is more likely than not that the Tenants negligence of pouring grease down the drain caused or contributed to the plumbing issues. I also find that the Tenant has failed to provide sufficient evidence that he suffered a loss of use of the rental unit in the amount of \$5,812.74.

The Tenant's request for compensation for money owed or damage or loss is dismissed without leave to reapply.

Conclusion

The Tenant failed to provide sufficient evidence that the Landlord breached the Act, Regulation, or tenancy agreement and I find that the Tenant caused or contributed to the plumbing issues.

The Tenant's application for money owed or compensation for damage or loss is not successful and 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: October 9, 2019

Residential Tenancy Branch