



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALL STAR DEVELOPMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PSF, MNDC, FF

Introduction

On November 20, 2019, the Tenants applied for dispute resolution under the *Residential Tenancy Act* ("the Act") seeking the following relief:

- for an order for the Landlord to provide services or facilities required by law.
- for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. The Tenant attended the hearing; however, the Landlord did not. The Tenant testified that he served the Landlord with the Notice of Dispute Resolution Proceeding using registered mail sent to the Landlord's service address on November 22, 2019. The Tenant provided the registered mail tracking number in support of his testimony. The Tenant testified that the registered mail was returned as unclaimed.

A Landlord or Tenant may not avoid service of documents required under the Act to be given or served to a person. I find that the Landlord was served with notice of the hearing in accordance with sections 89 and 90 of the Act. I find that the Notice of Hearing is deemed to have been served to the Landlord on November 25, 2019, the fifth day after it was mailed.

The Tenant was provided with an opportunity to ask questions about the hearing process. He was 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

The Tenant has moved out of the rental unit on December 31, 2019. The Tenant's request for an order that the Landlord provide services or facilities required by law is dismissed. The Tenant also testified that his monetary claim requesting to recover an overpayment of November 2019 rent has been resolved.

The Tenant's application proceeded on his claim to recover an overpayment of hydro costs.

Issues to be Decided

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

Background and Evidence

The Tenant testified that the tenancy began on June 1, 2018, as a 7-month fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$2,000.00 was due on or before the first day of each month. A security deposit of \$1,000.00 was paid by the Tenant to the Landlord. The Tenant provided a copy of page 2 of the tenancy agreement in support of his testimony. The Tenant testified that he moved out of the rental unit on December 31, 2019.

The Tenant testified that the rental property is a duplex unit. The Tenant occupied one side of the duplex. The Tenant testified that there is only one hydro electricity meter that is shared by both sides of the duplex. The Tenant testified that the Landlord required him to put the hydro service in his name. The Tenant testified that the tenancy agreement required him to pay 75% of the hydro bill. The Tenant testified that he paid the full amount of the hydro bills and the Landlord was to pay him back 25% of the bill.

The Tenant testified that the Landlord did not pay him any amount of the hydro costs. The Tenant provided a copy of the electric billing history for the duplex. The bill indicates that the electricity charges for 2018 are \$660.66 and the costs for 2019 are \$1,529.30. The Tenant is seeking a monetary order in the amount of \$547.48 which is 25% of these costs.

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.

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

I accept the Tenant's testimony that the tenancy agreement with respect to hydro electricity costs required the Tenant to pay 75% of the hydro costs. I accept the testimony that he paid the entire hydro bills and did not receive a re-payment of 25% of the costs from the Landlord.

I accept the Tenant's documentary evidence that shows the hydro costs were \$2,189.98 from July 2018 to September 2019. I find that the Landlord was required under their tenancy agreement to pay 25% of the hydro bill.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$647.48 for an overpayment of hydro costs and the recovery of the filing fee.

Conclusion

The Tenant established that he overpaid for the costs of hydro electricity during the tenancy. The Tenant is granted a monetary order in the amount of \$647.48.

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, 2020

Residential Tenancy Branch