Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kitsilano Management Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT OLC

Introduction

This hearing dealt with the tenants' 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; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

AN and DL ("landlord") appeared on behalf of the landlord in this hearing, and had full authority to do so. AH appeared for the tenants. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' application for dispute resolution ('applications'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act.*

Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant and landlord's applications and my findings around each are set out below.

This month-to-month tenancy began on August 1,2018, with monthly rent currently set at $1,726.59, payable on the first of every month. The landlord collected a security deposit in the amount of $810.00, which the landlord still holds. The utilities are in the tenants' names. The home contains two separate, tenanted suites. The tenants reside on the upper level which is approximately 1,169.00 square feet, while the lower level is approximately 900.00 square feet. The landlord pays the lower tenants' share of utilities, as it is included in their monthly rent.

The tenant testified in the hearing that they have no issue with the utilities being in their name, but they feel that it is unconscionable for them to be responsible for 50 percent of total utility usage for the home when there is no consequence for the lower tenants if they decide to increase their consumption of the utilities. The tenant applicants expressed concern that the lower tenants would use electric space heaters, which has substantially increased the utility bills, causing the tenant applicants to pay more each month. The tenant applicants testified that they control the main heating in the home, which is heated by a gas furnace. The tenants feel that the landlord could also increase the efficiency by performing upgrades.

The tenants testified that despite their efforts to manage the utility usage, they have noticed a spike of 81 percent in usage and 100 percent increase in the cost as reflected in their most recent electricity bill. The tenants testified that they had attempted to address this by speaking to the lower tenants, but believe that an issue exists where the lower tenants have no incentive to manage their usage as they are not responsible for paying any portion of the utility bills. The tenants are requesting that a cap be placed on the amount they must pay, specifically $107.00 for the electricity bill, and $100.00 for the gas bill. The tenants submit that they had carefully calculated these figures based on the average yearly and cold month usage and costs going back to 2017.

The landlord responded that they feel that the current arrangement is fair, and that the tenants actually occupy 57 percent of the home, despite only paying 50 percent of the utilities. The landlord testified that the landlord is responsible for 50 percent of the utilities, so the landlord has an active interest in addressing any issues with the usage, utility costs, and efficiency of the home. The landlord testified that the home is 48 years

old, and that they have a handyman who maintains the home, and have done upgrades as needed. The landlord testified that the furnace is less than 10 years old.

The landlord provided their own analysis of amounts owed for 2018 and 2019, and feel that the increased costs are attributed to the cooler temperatures in the last two years, and not necessarily the increased usage by the lower tenants. The landlord feels that the 50/50 split is fair considering that the tenants occupy more than 50 percent of the home.

Analysis

It was undisputed by both parties that the tenants are responsible for 50 percent of the utilities for the entire home, while the lower tenants have their utilities included in their monthly rent. The landlord pays the other 50 percent.

Section 1 of the **Residential Policy Guidelines** states the following about shared utilities:

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[5] as defined in the Regulations.

2. 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 gives the following definition of "unconscionable":

> **3** 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.

I find it unconscionable within the meaning of the Regulation to require that the utilities be in the tenants' names for the entire home, when they only occupy one of the suites. Although I recognize that the landlord does pay the other half of the utilities, I find the requirement to have the utilities in the tenants' names to be grossly unfair in the case that disputes may arise about the usage. There have been issues in the past with the payment of utility bills as admitted in the landlord's own submissions.

Unless the tenant applicants wish otherwise, I order that the landlord place the utilities in the landlord's name, and that the landlord be responsible for collecting a pro-rated portion of the utilities from the tenants. I order that the utility bills be transferred to the landlord's name by July 1, 2020, and that the landlords collect a portion of the bill from the tenants. Failure to comply with this Order could result in liability under the *Act.*

In consideration of the tenants' proposal that a cap be placed on the amount they would owe, I find the proportion they pay to be reasonable. I find that the tenants do occupy more than 50 percent of the home, and that the percentage owing reflects the approximate proportion of their suite. Although I acknowledge their concerns about the increased consumption and resulting higher amounts reflected on the bills, I find that the tenants failed to provide sufficient evidence to support that the increased consumption of usage is due to the behavior of the lower tenants rather than other factors such as cooler weather. Although the tenants posed a valid concern that the lower tenants may be less inclined to monitor their usage due to the fact that they do not pay any portion of the utilities, I find that the landlord's concerns about fairness to be valid as well. I find the fact that the landlord pays the other 50 percent of the utilities places the landlords in an equal position as the upper tenants, and that they would share the same concern or interest in addressing issues that would impact the amounts owed for utilities. I also find that landlord has demonstrated that despite the age of the home, they have fulfilled their obligations to repair and maintain the home as required by section 32 of the *Act.* I find that placing a cap on the utilities owed by the upper tenants would be unfair to the landlords as I am not satisfied that any additional amounts owed above and beyond these proposed caps can be attributed to the behavior of the lower tenants or the landlord. For this reason, I dismiss the tenants' application for an amendment on the amount of utilities that they are responsible for.

As the tenants were partially successful in their application, I allow the tenants to recover half the filing fee for this application.

Conclusion

Unless the tenant applicants wish otherwise, I order that the landlord place the utilities in the landlord's name, and that the landlord be responsible for collecting a pro-rated portion of the utilities from the tenants. I order that the bills be transferred to the landlord's name by July 1, 2020, and that the landlords collect the 50 percent owed by the tenants.

I dismiss the tenants' application to amend the tenancy agreement to change the amount of utilities that they are responsible for.

I allow the tenants to implement a monetary award of $50.00 for recovery of the filing fee by reducing a future monthly rent payment by that amount.

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 27, 2020

Residential Tenancy Branch