



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI FFT

Introduction

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

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, and that they took no issue with the admittance with these materials, all documentary materials submitted for this hearing was admitted for the purposes of this hearing.

Issues to be Decided

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlord?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant first moved into this home in August of 2015. In October of 2019 she requested to move to a different room in the home. In November of 2019 the tenant started renting a different room, with monthly rent set at \$550.00 per month. The landlord testified that although utilities were included when the tenant first moved in, in 2017 all tenants started paying 10 percent towards the utilities. No formal written tenancy agreement exists for this tenancy.

This tenancy ended on June 7, 2020 after a hearing was held on June 5, 2020, and the Arbitrator granted the landlord an Order of Possession.

The tenant's application relates to an increase in the percentage of utilities imposed by the landlord. The tenant testified that in March the landlord demanded 12 percent of the utilities. The tenant testified that the landlord informed them that the increase was to cover the additional usage by all tenants abiding by the government suggested "stay at home" order during the pandemic.

The landlord does not dispute that the amount owed for utilities has increased from 10 percent to 12 percent, but that was with the mutual agreement of the tenants. The landlord testified that this increase was effective in January of 2020, and the tenant has only paid 12 percent of the electricity bill of \$605.50, of which the tenant's share was \$72.66. The landlord testified that the tenant has refused to pay any portion of the gas bill. The landlord provided a copy of the cheque dated April 1, 2020 for that amount, along with the electricity bill. The landlord also provided a copy of the unpaid gas bills in the amount of \$72.76 for the billing period ending March 24, 2020, and \$17.40 for the billing period ending April 22, 2020. The landlord attached the respective payment notices reflecting 12 percent of these bills. The landlord requested \$8.73 for the March 2020 invoice and \$2.08 for the April 2020 invoice.

The tenant disputes that she had ever agreed to the increase. The tenant testified that the landlord never provided copies of the invoices to her, and only posted the figures on a board with the tenants' proportioned shares. The tenant testified that the landlord also never issued receipts for her cash payments. The landlord did not dispute that the invoices were not provided on an individual basis to the tenants, but upon request of the tenant, the landlord would show the tenants the bills. The landlord admitted that no receipts have been issued for cash payments, but testified that the tenants had the option of making in payment in other forms such as by cheque.

Analysis

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 this application and my findings around it are set out below.

Section 42 of the Act states the following about how a Notice of Rent Increase is to be given:

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

I do not find that the landlord had contravened section 42 (3) of the *Act*. Although no formal written tenancy agreement was signed by either party, I find that the tenant entered a new tenancy with the landlord for a different room in November of 2019, with monthly rent set at \$550.00. I do not find that the landlord had imposed a rent increase in contravention of the Act. However, I find that it was undisputed by both parties that the tenant was required to pay 2 percent more towards the utilities in 2020.

Despite the landlord's testimony that this increase was by mutual consent of both parties, I find that the landlord has not provided sufficient evidence to support that the tenant had consented to this. I find that the landlord had unilaterally changed the tenancy agreement to imposed an increase in the proportion of utilities payable by the tenants from 10 percent to 12 percent. I find that the landlord had contravened section 14(2) of the *Act* which states that "A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and

tenant agree to the amendment.” I allow the tenant’s application disputing the change, and I order that the tenant’s portion of utilities reflect only 10 percent of the utilities. As the electricity bill was \$605.50, the amount payable by the tenant is \$60.55

The landlord submitted the gas bills for March and April 2020, which I find that the tenant has not paid any portion of. I order the landlord amend the invoices to reflect the amount owing from 12 percent to 10 percent. The tenant, therefore, owes \$7.28 for the March 2020 billing period and \$1.74 for the April 2020 billing period. As the tenant had previously paid \$72.66 towards the electricity bill, I order that the \$12.11 in overpayment be applied towards the outstanding gas bill. The tenant shall be refunded the remaining \$3.09 in overpayment for utilities for the period up to, and including, April 2020. I note that this dispute pertains only to the tenant’s application, and any additional losses or money owed to the landlord or tenant must be dealt with in a separate application.

I allow the tenant’s application to recover the filing fee for this application.

Conclusion

I allow the tenant’s application disputing the increase in utilities imposed by the landlord. I order that the tenant’s share of utilities be set at 10 percent, and any additional utilities paid by the tenant be refunded to her. I also allow the tenant to recover the filing fee.

I issue a \$103.09 Monetary Order in favour of the tenant as set out in the table below. The tenant is provided with a Monetary Order in the amount of \$103.09, and the landlord(s) must be served with **this Order** as soon as possible.

Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court

Amount Owed for Electricity Bill	\$60.55
Amount Owed for Gas Bills	9.02
Less Utilities paid by tenant	-\$72.66
Total Refund of Utilities to Tenant	\$3.09
Filing Fee	100.00
Total Monetary Order	\$103.09

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 10, 2020

Residential Tenancy Branch