



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR

Landlord: OPU MNR MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on February 22, 2021. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided testimony. The Landlord confirmed receipt of the Tenant’s application, Notice of Hearing, and evidence packages. The Tenant confirmed receipt of the Landlord’s application, Notice of Hearing, and evidence packages. Neither party raised any issue with respect to service of the documentation or the above noted packages. Both parties had an opportunity to review and respond to the documentation in advance of the hearing. Both parties received each other’s documentation at least 2 weeks before the hearing.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy (the Notice) be cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

The tenancy started around August 11, 2020, when the Tenant moved into a single bedroom within a shared living arrangement (other roommates also renting out other rooms under separate agreements within the house).

Both parties agree that the Tenant paid a security deposit of \$175.00. Both parties also agreed that monthly rent was set at \$350.00 per month, and rent was due on the first of the month. The parties do not agree with respect to whether or not this amount included utilities (gas and electricity). A copy of the tenancy agreement was provided into evidence. The tenancy agreement is signed by the Landlord but not signed by the tenant, and it states the following:

“Monthly payment is \$350.00 for the agreement starting on August 11, 2020, and ending on September 30, 2020 to be paid in the first day of each month. The fast speed internet, gas, electricity, washing and drying machines is included.” [this term is computer typed]

The Landlord underlined the computer typed “gas and electricity” words in the above noted term. The Landlord also wrote, by hand, on the bottom of the agreement, that the “Tenant will pay 7% of gas and electricity that will be from \$20.00 to \$30.00 per month.” The one-page tenancy agreement is only signed by the Landlord, not the Tenant, although the Tenant acknowledges seeing the agreement on the day she paid the deposit.

The parties disagree on whether or not the monthly rent included utilities, or whether or not these were to be paid on top of the base rent amount of \$350.00 per month.

The Tenant stated that she responded to an online ad listing a room for rent at a rate of \$350.00 per month. The Tenant provided a copy of a text message into evidence, which shows she was viewing the room the Landlord was renting for \$350.00. The Tenant also provided several copies of other text messages she had with the Landlord. However, most of the text message conversations are unclear, poorly worded, and difficult to understand.

The Landlord acknowledged that the typed tenancy agreement he uses lists that utilities are included in rent. However, he stated that his practice is to modify this term, and write it at the bottom of the 1 page tenancy agreement by stating that the Tenant has to pay 7% of the electricity and gas. The Landlord stated that this is what he did with the previous tenants as well. The Landlord stated that on August 11, 2020, when the Tenant agreed to rent the room from him, he told her she needed to pay \$225.00 (\$350.00 base rent used to calculate a per diem rate for 20 days in August), plus \$175.00 for the security deposit. The Landlord stated that the amount that was due at the start of the tenancy was \$400.00, but when he met with the Tenant on August 11, 2020, she only had part of this amount, and had to go to the bank to withdraw the extra amount to cover the security deposit.

The Tenant explained that on August 11, 2020, she initially met the Landlord at the church to discuss which room she wanted to view, and following this brief meeting, the Tenant and the Landlord went to the house to view the \$350.00 room, rather than the other room in a different area for more money. The Tenant stated that at this time, she met the other roommate, viewed the room, and obtained the key. The Tenant stated that it was at this time that she paid the Landlord the \$225.00 for August 11 – August 31. The Tenant stated that after she paid the Landlord, he brought out a copy of the written tenancy agreement, and started writing information about the utilities not being included in rent. The Tenant stated that she was under the impression that utilities were included in rent, and so she never signed the tenancy agreement. The Tenant stated that at this point, she also became aware she had to pay a security deposit, and she did not have enough cash on her at that time, which is why she and the Landlord attended the bank, together.

The Tenant stated that the next amount she paid was on August 31, 2020, when she paid the Landlord \$360.00 for September 2020 rent. The Tenant stated that she didn't have the correct change, so she paid \$360.00 in cash, and asked the Landlord to apply the extra 10 dollars to next month's rent. The Landlord provided a copy of a receipt he issued, which states that he received applied the \$10.00 amount, on top of the \$350.00, as a partial payment of "September" bill, although it was not clear whether the Landlord was referring to the rent or the utility bill. The Tenant denies that this was a utility payment, and stated it was only ever supposed to be applied to base rent.

The Tenant stated that following this she made another monthly payment to the Landlord on September 27, 2020, for October's rent. At this time, the Tenant paid her base rent of \$350.00 for October, but she also paid an amount to cover some of

September's utility bills. The Tenant stated that this is the only month where she actually paid an amount for utilities, and she only did so because the Landlord was pressuring her and being aggressive about the utilities being an amount that was due above and beyond base rent of \$350.00. The Landlord denies that he was pressuring her, and he feels the Tenant knew she had to pay utilities, and after paying them for August, and September, she stopped paying any utility amounts.

Following this, the Landlord issued a demand letter to the Tenant around November 4, 2020, for unpaid utility bills for October. After the Tenant failed to repay the amount noted on the utility demand letter, he issued this 10 Day Notice to End Tenancy for Unpaid Utilities in the amount of \$64.53. The Tenant acknowledged getting the 10 Day Notice on December 4, 2020. The Landlord stated that the amount of unpaid utilities has now increased to approximately \$179.51.

In summary, the Landlord is seeking an order of possession based off the unpaid utilities and the related 10 Day Notice from December 4, 2020. The Landlord is also seeking a monetary order for the unpaid utility amounts as well as some additional money for rent. More specifically, on the issue of additional rent he feels he is owed, the Landlord stated that he is seeking an additional \$100.00 per month, starting in November 2020, because the Tenant's roommate moved out at the end of October. The Landlord stated that he had a verbal agreement with the Tenant that she was to pay \$450.00 per month, if her roommate moved out. The Tenant denies that she ever agreed to this or that she owes anything more than initially agreed to amount of \$350.00 per month.

Analysis

In this review, I will not attempt to resolve all evidentiary conflicts, and will focus on evidence and testimony as it relates directly to my findings with respect to whether there are sufficient grounds to end the tenancy based off the Notice issued or if there is sufficient evidence to demonstrate that there is money owed.

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

The Legislation allows a landlord to treat unpaid utility charges as unpaid rent if the tenancy agreement requires the tenant to pay utility charges to the landlord and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them.

In this case, the parties completely disagree with respect to whether or not the utilities were included in monthly rent. Having reviewed the evidence and testimony on this matter, I note there is no written tenancy agreement which has been signed by both parties.

I note the following portion of the Act:

Tenancy agreements include the standard terms

12 The standard terms are terms of every tenancy agreement

- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and*
- (b) whether or not the tenancy agreement is in writing.*

Requirements for tenancy agreements

- 13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.***

I also note the following portion of the Regulations:

Disclosure and form of agreement

12 (1) A landlord must ensure that a tenancy agreement is

- (a) in writing,*
- (b) signed and dated by both the landlord and the tenant,*
- (c) in type no smaller than 8 point, and*
- (d) written so as to be easily read and understood by a reasonable person.*

[my emphasis added]

A review of the legislation and the regulations clearly indicates that a Landlord is required to prepare every tenancy agreement, in writing, and that both parties are to sign and date the agreement. Clearly this was not done, and I find the Landlord breached section 13 of the Act and section 12 of the regulations by failing to obtain the Tenant's signature on the tenancy agreement he drafted. Without a signature from the Tenant on the tenancy agreement, the terms in that written agreement are not

enforceable, as it is not clear whether or not the terms were agreed upon. However, even though there was no properly completed and signed tenancy agreement, I find there was still a verbal tenancy agreement.

The parties agreed in the hearing that the Tenant agreed to pay \$350.00 for a single bedroom in a shared living arrangement whereby the Tenant shared a space with a roommate, who had a separate tenancy agreement with the Landlord. The parties also agree that rent was due on the first of the month, and that the Tenant paid a security deposit in the amount of \$175.00. Other than these core amounts, it does not appear there was much agreement on any of the other items, particularly with respect to the payment of utilities.

The Tenant asserts that she was told it would be \$350.00 per month, all inclusive, and she claims that the Landlord attempted to add in a clause to get her to pay for electricity and gas after she had paid him the first month's rent on August 11, 2020. The Landlord stated that the utility amounts were always separate, and this is what he has done with all his Tenants in the past. I note the Landlord provided a copy of a previous tenancy agreement with a different tenant in the house, whereby he also wrote the utility terms at the bottom of that agreement. I do not find that other agreement helpful in this case, as each tenancy agreement can be different, and it depends upon what the parties agree to, not what other Tenants have agreed to in the past. In any event, the onus is on the Landlord to lay out, and prepare the tenancy agreement, such that both parties can review it, and decide whether or not to accept the terms of the agreement.

I also find it important to note that, even if the Tenant had signed the tenancy agreement the Landlord drafted, it contains contradictory and problematic language surrounding the utilities. On one hand the Landlord went to the trouble of specifying the electricity and gas are "included", but then he added a term near the end, in writing, which says the Tenant has to pay 7% of gas and electricity bills. Although the Landlord erred by not getting the Tenant to sign the written tenancy agreement at the start of the tenancy, I find he also erred when he added contradictory terms to a tenancy agreement. If the Landlord didn't want gas and electricity to be included in the base rent of \$350.00, then he should have removed that from the computer typed agreement, rather than leave it in and put a contradictory term at the end of the agreement, by hand. The Landlord effectively set the stage for misinterpretation by laying his tenancy agreement out in this manner.

With respect to the receipts issued by the Landlord, I note that the one issued on August 31, 2020, was for \$360.00, which is \$10.00 more than base rent. I accept the Tenant's explanation that this was because she paid in cash, and didn't have the

appropriate change to pay \$350.00. I do not find the receipt is sufficiently clear as to show that the extra 10 dollar payment is a utility payment, or that this demonstrates the Tenant's agreement to pay extra for utilities. I also note the receipt from September 27, 2020, whereby the Tenant paid an additional amount for utilities, on top of her base rent of \$350.00. The Tenant does not dispute that she paid extra for utilities that month (gas and electricity) but she asserts that she only paid because the Landlord was pressuring her, not because she actually agreed to this up front. In any event, I do not find that, by paying utilities for September 2020, as outlined in the receipt from September 27, 2020, the Tenant has agreed to the fact that utilities are in fact separate and extra, on top of regular base rent.

I have reviewed the text messages provided into evidence and I do not find any of the text messages or emails are sufficiently clear such that they show that there was a "meeting of the minds" regarding the utilities.

Also, I note the Landlord has stated that he had a verbal agreement with the Tenant, whereby she would pay an additional \$100.00 per month, if her roommate moved out. However, this was refuted by the Tenant. I find there is insufficient evidence that this was something that the parties agreed to. The onus is on the Landlord to demonstrate that he is owed the additional amount for rent (\$100.00 extra) and without evidence of a clear agreement on that matter, I find the Landlord's claim for the extra \$100.00 per month fails. There is insufficient evidence that rent was any more than \$350.00.

I have reviewed the totality of the evidence and testimony, and considered the grounds each party has applied for. In this case, I note the onus is on the Landlord to support the basis for the 10 Day Notice to End Tenancy for Unpaid Utilities, as well as to support his application for monetary compensation (for gas and electricity, and for an additional rent amount of \$100.00 due to the Tenant's roommate moving out). As stated above, I do not find the Landlord is entitled to an additional rent amount of \$100.00 per month. With respect to the utilities, and specifically the gas and the electricity, I find there is a certain amount of ambiguity regarding what was included in rent and whether or not this was agreed upon.

The parties do not dispute that monthly rent was \$350.00, due on the first of the month, but they clearly do not agree on the utility terms. I find the Landlord substantially contributed to the confusion at the time the parties entered into a verbal tenancy agreement on August 11, 2020. The Landlord contributed to the confusion by including contradictory terms in the tenancy agreement, and by not ensuring the terms were put in writing, and agreed to. It appears the tenancy agreement was not signed by the tenant, even though she viewed it, largely due to the fact it had contradictory terms

about the utilities. Despite all of this, the parties appeared to proceed to begin the tenancy when the Tenant paid her rent, and security deposit, and she obtained the keys on August 11, 2020. The Landlord should have ensured there was a clear written agreement, prior to allowing the tenancy to start. In failing to do so, he created an ambiguous situation.

I note the following principle in contract law called *Contra proferentem* which provides that ambiguity in a contract is interpreted against the person who drafted and set up the terms (in this case it was the Landlord who set rent, the deposits etc). There is an expectation that the Landlord make these issues and terms clear when the tenancy agreement is drafted. Given this was not done, and no agreement was reached, I interpret the verbal tenancy agreement the parties had to mean that rent was \$350.00 and included gas and electricity. This arrangement will remain in effect until the tenancy ends, or the parties come to a new, written agreement.

I note the Tenant received the 10 Day Notice to End Tenancy for Unpaid Utilities on December 4, 2020. The amount listed on that Notice was for \$64.53 in unpaid gas and electric utility bills. However, I do not find the Tenant is obligated to pay more than \$350.00 per month, and I do not find the Landlord has sufficiently demonstrated that the Tenant owed the above noted utility amounts. As such, I hereby cancel the 10 Day Notice, issued December 4, 2020, and it is of no force or effect. Further, I dismiss the Landlord's application for the recover of the gas and electricity bills.

Conclusion

In summary, the Tenant's application to cancel the 10 Day Notice is successful. The Landlord's request for and order of possession based off the 10 Day Notice, as well as his application for monetary compensation for rent and utilities are both dismissed, without leave.

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: February 22, 2021

Residential Tenancy Branch