Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL-S, MNRL-S

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords filed under the Residential Tenancy Act (the "Act") for a monetary order for compensation for my monetary loss or other money owed, for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property, for a monetary order for unpaid rent and/or utilities, for permission to retain t,he security deposit, and the return of the filing fee. The matter was set for a conference call hearing.

The Landlords were represented by three persons (the "Landlords"), and both Tenants attended the hearing and were affirmed to be truthful in his testimony. The Landlords and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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.

Preliminary Matter – *Amendment*

At the outset of these proceedings, the matter of service of two amendments to the Landlords' application was addressed.

Both respondents, who attended this processing, testified that they had not been served with either of the Landlords' amendment requests.

The Landlords testified that they only had a forwarding address for one of the respondents and that they had mailed both of their amendment requests to that address in accordance with the Act.

The Tenants testified that they had notified the Landlords that the forwarding address they had for them was no longer good and had requested that all documents be served to them via email and that email address had been provided to the Landlords.

The Landlords testified that they did have the email address for two of the three Tenants but that they had served as required under the Act, by Canada post mail, to the last known address.

I accept the testimony of the Tenants that they have not received either of the Landlords' amendment applications, and I find that it would be procedurally unfair to the Respondents, these Tenants, to proceed on the Landlords' amended application at this time.

An adjournment was offered to the Landlords to allow for service of their amendment application to the Tenant, which would have included approval for service of documents by email. The Landlords refused the offered adjournment and email service approval and requested to proceed on their original application, dated November 4, 2020, that had been served on all three Respondents while they still resided in the rental unit.

I will be proceeding in this hearing on the Landlords' original application for a monetary order for unpaid utilities and the recovery of the filing fee for this hearing.

I have made no legal determination regarding the service of documents by email in these proceedings.

Issues to be Decided

- Is the Landlords entitled to a monetary order for unpaid utilities?
- Is the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the tenancy began on September 1, 2020, as a one-year fixed term tenancy. Rent in the amount of $2,100.00 was to be paid by the first day of each month, and the Landlords collected a security deposit of $1,050.00 at the outset of this tenancy. These parties also agreed that this tenancy ended on December 15, 2020. the Landlords submitted a copy of the Tenancy agreement into documentary evidence.

The Landlords testified that the utilities were not included in the tenancy agreement and that the Tenants had not paid the hydro bill for this tenancy. The Landlords testified that it had been verbally agreed that the utilities would be split based on the number of people residing on the rental property.

The Landlords testified that five people lived on the property between September 1, 2020, and October 23, 2020, and that the Tenants portion of the utility bills for this period is $178.71. The Landlords submitted two hydro bills into documentary evidence.

The Tenants testified that they never agreed to a five-way split of the utility bills for this rental property. The Tenants testified that the Landlords occupy the entire first and second floors of this three-floor building and that the basement area in which they occupied during this tenancy also included the garage/carport that was solely used by the Landlords. The Tenants argued that they should not be forced to pay the majority of the utilities for this rental property since the Landlords occupied the majority of the space.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find as follows:

I have carefully reviewed the tenancy agreements entered into by these parties, and I find that the written agreement clearly states that electricity was not included in the rent. However, I find that the Landlords have two separate living units running off the same meters for electricity for this rental property and that there is no indication on this tenancy agreement as to the agreed to split of the utility bills for this property.

I have carefully reviewed the tenancy agreements entered into by these parties, and I find that the written agreement clearly states that electricity was not included in the rent. However, I find that the Landlords has two separate living units running off the same

meters for electricity for this rental property, and that there is no indication on this tenancy agreement as to the agreed to split of the electricity bill for this property.

Section 6(3) of the *Act* provides that a term of a tenancy agreement is not enforceable if, the term is not expressed in a manner that clearly communicates the rights and obligation under it.

> ***Enforcing rights and obligations of Landlords and tenants***
>
> ***6*** *(1) The rights, obligations and prohibitions established under this Act are enforceable between a Landlords and tenant under a tenancy agreement.*
> *(2) A Landlords or tenant may make an application for dispute resolution if the Landlords and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes].*
> *(3) A term of a tenancy agreement is not enforceable if*
>
> *(a) the term is inconsistent with this Act or the regulations,*
> *(b) the term is unconscionable, or*
> *(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

As it is the Landlords responsibility to draw up the tenancy agreement, I find that they bore the obligation to ensure that the terms therein were certain and the obligation of the parties was well-defined. After careful review of the tenancy agreement, I find there is nowhere in the tenancy agreement is it defined what portion of the utilities for this property were assigned to this tenancy. Given that this rental building has more than one unit and that the utility bills are for the whole building and not just for the Tenants' rental unit, I find that it would be unreasonable to expect that the Tenants ought to have known what portion of the utilities they were responsible for paying without it being clearly defined in the tenancy agreement.

In the absence of agreed-upon testimony and utility bill term in this tenancy agreement, I must look to the legal rule of Contra Proferentem to resolve this dispute.

Contra Proferentem is a rule used in the legal system when interpreting a contract, which basically means that any ambiguous clause contained in a contract will be interpreted against the party responsible for drafting the clause.

I find that pursuant to the rule of *contra proferentem*, the ambiguity in this term must be resolved against the Landlords whose responsibility it was to draft the tenancy

agreement. Therefore, I dismiss the Landlords' claim for the recovery of unpaid utilities for this tenancy in its entirety.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords has not been successful in this application, I find that the Landlords is not entitled to recover the $100.00 filing fee paid for this application.

As the Landlords has failed in their claim against the Tenants' security deposit, I find that the Landlords are not entitled to retain any portion of the security deposit for this tenancy. I order the Landlords to return the security deposit that they are holding, in the amount of $1,050.00, for this tenancy to the Tenants within 15 days of the date of this decision.

If the Landlords fails to return the security deposit to the Tenants as ordered, the Tenants may file for a hearing with this office to recover their security deposit for this tenancy. The Tenants are also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the Act if an application to recover their security deposit is required.

Conclusion

The Landlords' application is dismissed without leave to reapply.

I order the Landlords to return the Tenants' security deposits to the Tenants within 15 days of the date of this decision.

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: March 2, 2021

Residential Tenancy Branch