



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on May 13, 2021. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. The Landlord acknowledged receipt of the Tenant's application package and evidence. The Tenant acknowledged receipt of the Landlord's evidence. Neither party raised any issue with respect to service of any of the documents. I find all parties sufficiently served each other for the purposes of this 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 applied for multiple remedies under the *Act*. However, it appears the central issue on both grounds the Tenant has applied for is related to a City of Victoria Utility Bill, and what part of this bill she is liable for.

The Landlord expressed that they do not wish to end the tenancy, and only want guidance on whether or not the Tenant is responsible for all or part of the City of Victoria Utility Bill. The Tenant also did not wish to end the tenancy.

Both parties agreed to set aside and cancel the 10 Day Notice to End Tenancy, issued February 5, 2021. I hereby cancel this 10 Day Notice, as both parties agreed to this matter in the hearing. The only remaining issue on this application, which warrants

consideration, is what (if any), part of the City of Victoria Utility Bill the Tenant is liable for.

The Tenant and the Landlord agreed to split the cost of the filing fee on this application, as they both want clarification on the utility issue. The Landlord agreed to allow the Tenant to deduct \$50.00 from one future rent payment, to compensate her for half the filing fee of \$100.00. In accordance with this agreement made at the hearing, I authorize the Tenant to deduct \$50.00 from one future rent payment for the cost of the filing fee for this application.

Issues(s) to be Decided

- What part of the City of Victoria Utility Bill is the Tenant responsible for under her tenancy agreement?

Background and Evidence

Both parties agree that current rent is \$1,500.00 and is due on the first of the month. A copy of the tenancy agreement was provided into evidence, as well as some communications the parties have had about the City of Victoria Utility Bill. The Landlord also submitted actual copies of the City of Victoria Utility Bills to show what is included in this bill.

The Tenant explained that this rental unit is half of a duplex house. The Tenant stated that she pays for all utilities such as cable, internet, and electricity, all of which are in her name. Those bills are not the problem, as they are under her name, and clearly for her usage. The other half of the duplex is responsible for their equivalent bills, as they are all separately billed. The Tenant further explained that the only utility bill which is shared by the two sides of the duplex is the City of Victoria Utility Bill, which comes 3-4 times per year. The Landlord confirmed that the house only has one water meter, and both sides of the duplex utilize this service, and split this bill 50/50.

A copy of the tenancy agreement shows the following with respect to utilities:

3. RENT (please fill in the information in the spaces provided)

a) Payment of Rent:

The tenant will pay the rent of \$ 1500⁰⁰ each (check one) ☐ day ☐ week ☒ month to the landlord on the first day of the rental period which falls on the (due date, e.g., 1st, 2nd, 3rd, 31st) 1st day of each (check one) ☐ day ☐ week ☒ month subject to rent increases given in accordance with the RTA.

The tenant must pay the rent on time. If the rent is late, the landlord may issue a *Notice to End Tenancy for Unpaid Rent* (form RTB-30) to the tenant, which may take effect not earlier than 10 days after the date the notice is given.

b) What is included in the rent: (Check only those that are included and provide additional information, if needed.) The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

<input type="checkbox"/> Water	<input type="checkbox"/> Natural gas	<input type="checkbox"/> Garbage collection	<input checked="" type="checkbox"/> Refrigerator	<input type="checkbox"/> Carpets
<input type="checkbox"/> Cablevision	<input type="checkbox"/> Sewage disposal	<input type="checkbox"/> Recycling services	<input type="checkbox"/> Dishwasher	<input type="checkbox"/> Parking for <u>1</u> vehicles
<input type="checkbox"/> Electricity	<input type="checkbox"/> Snow removal	<input type="checkbox"/> Kitchen scrap collection	<input checked="" type="checkbox"/> Stove and oven	<input type="checkbox"/> Other: <input type="text"/>
<input type="checkbox"/> Internet	<input type="checkbox"/> Storage	<input type="checkbox"/> Laundry (coin-op)	<input type="checkbox"/> Window coverings	<input type="checkbox"/> Other: <input type="text"/>
<input type="checkbox"/> Heat	<input type="checkbox"/> Recreation facilities	<input checked="" type="checkbox"/> Free laundry	<input type="checkbox"/> Furniture	<input type="checkbox"/> Other: <input type="text"/>
<input type="checkbox"/> Additional information: <input type="text"/>				

The Landlord explained that the tenancy agreement clearly shows that the Tenant is liable for all utilities. The Landlord stated that the tenancy agreement is supposed to show what is “included” in rent, and the only utilities that are included are “free laundry”, “refrigerator”, and “stove and oven”, as indicated above. The Landlord pointed to the City of Victoria Utility Bill to show that this entire bill is under their name, and this bill includes water service, water consumption, sewer (which is charged proportionately to water use), and garbage collection. This issued 3-4 times per year and covers both sides of the duplex (address starting with #45 and #47).

The Tenant asserts that she had a verbal conversation with the Landlord at the start of the tenancy, and that she would be responsible for half the water consumption.

However, she feels that since the other items (sewer, garbage collection) were not explicitly indicated or discussed, that she should not be responsible for those amounts.

The Tenant and the Landlord appear to have had several back and forth conversations and emails about whether or not the Tenant needs to pay 50% of the full amount of the City of Victoria Utility Bill or just 50% of the water consumption piece. It does not appear the parties have ever seen eye-to-eye on this matter.

Analysis

In the matter before me, as the applicant, the Tenant has the onus to prove that that her application has merit. Based on the evidence and testimony before me, I make the following findings:

Tenancy Agreement

I note the parties have had several conversations and disagreements about the City of Victoria Utility Bill throughout the tenancy. However, there is no evidence the parties have ever come to an agreement, above and beyond the tenancy agreement, with respect to utility bills. There is also no evidence that the parties agreed to modify the tenancy agreement in any manner. It appears the Tenant has largely failed to pay for 50% of the entire City of Victoria Utility Bill, and has instead paid her part of the water consumption only. The Landlord has always taken issue with this, but the parties have never had a clear resolution for the duration of the tenancy.

I note the Landlord has utilized the standard RTB tenancy agreement form, for this tenancy. I find that the Tenant's obligations with respect to utility expenses are included in section 3 of that agreement under "Rent". I find the wording of this agreement is such that the Landlord only has to list the utilities that are "included" in the base rent amount of \$1,500.00. I find that if a utility is not explicitly listed under this part of the tenancy agreement, then it is not included in rent, which means the Tenant is liable for those items(or the proportionate amount of). I note this part of the tenancy agreement also states to "check only those [utilities] that are included."

In this case, I note that water, sewage disposal, as well as garbage collection (the components of the City of Victoria Utility Bill) are all crossed off, and they are not selected as "included in rent". The utilities that *are* included (such as laundry, stove/oven etc) are all noted with a clear check mark. I find this means the Tenant is liable for the amounts that are not explicitly included and demarcated by a check mark.

Given this bill is split between both sides of the duplex, I find this means the Tenant is liable for 50% of the entire City of Victoria Utility Bill, not just 50% of the water consumption part of that bill as she suggested.

In this case, I find the entire City of Victoria Utility Bill is considered a utility, which can be split between the units and can be treated as such under the Act. I note this bill includes consumables, and services necessary to support the tenancy. There does not

appear to be any dispute that each side of the unit is responsible for 50% of the water bill. However, I find this proportion also applies to the overall split of this bill between the units.

In summary, I find the tenancy agreement signed by the parties clearly shows the City of Victoria Utility Bill (and all components of it) is not included in rent. The Tenant is responsible for 50% of this bill. However, this decision does not include a monetary order or any findings about what amount is actually owed.

I encourage the parties to try and resolve what amount is owed on their own. However, if the parties are unable to settle what amounts are outstanding, then the Landlord is granted leave to apply for monetary compensation for this utility issue. This decision only relates to whether or not the Tenant is liable for the City of Victoria Utility Bill (and what proportion), not what actual amounts are owed.

Conclusion

The Tenant is responsible for 50% of the overall City of Victoria Utility Bill for this property. The bill covers this rental unit, and the other half of the duplex.

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 13, 2021

Residential Tenancy Branch