



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to have the landlord comply with the Act, regulation and/or tenancy agreement, for a monetary order for monetary loss or other money owed, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not making a prohibited recording of this hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issues to be Decided

Should the landlord be ordered to comply with the Act, regulation and/or tenancy agreement,?

Are the tenants entitled to monetary compensation for loss or other money owed?

Background and Evidence

The tenancy began on May 31, 2019. Rent in the amount of \$2,400.00 was payable on the first of each month. A security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00 were paid by the tenants.

The tenants testified that they seek an order for the landlord to comply with the tenancy agreement because the landlord is charging them for city utilities, such as water that was included in the rent. The tenant stated that they also seek to recover the amount

paid for these utilities as they only paid them to ensure a notice to end tenancy that was issued was cancelled.

The tenants testified that when they entered into the tenancy agreement the landlord crossed out the requirement for them to have to pay for the city utilities in clause 2., of the addendum after this issue was discussed because the occupants in another unit were not paying the city utilities and it would be unfair for them to have to pay for this service.

The addendum shows as follows:

**2. The tenants have agreed to pay rent of \$2400.00 on or before the 1st of every month, starting June 1st, 2019. Any late payment without notice may be subject to a \$50 late fee.
All utilities (electricity, natural gas and ~~city services of water and garbage/recycling/greens disposal~~) will be the responsibility of the tenants & must be registered in the tenant's name.**

[Copied from the addendum]

The tenants stated they never heard anything from the landlord until December 7, 2019, telling them that they were required to pay for and have the city utilities place in their name. The tenants stated that they responded to the landlord in an email dated December 9, 2019, stating that these utilities were crossed out in the tenancy agreement and on December 19, 2019 the landlord stated they would look into it. The tenants stated that they never heard back from the landlord, so they figured this matter was settled by the landlord reviewing the tenancy agreement.

The tenants testified that in November 2020, they received an email from the landlord with copies of the invoices for the city utilities stating they owed the amount of \$556.72 for January 2020 to October 2020. The tenants stated that they disagreed that they were responsible for the city utilities.

The tenants testified in January 21, 2021 they received another email from the landlord for November and December 2020 utilities and on February 25, 2021 they received a demand letter for payment in the amount of \$624.38.

The tenants testified that they tried to resolve this matter with the landlord and presented a settlement offer that they would pay city utilities beginning 2021, with a \$50.00 rent reduction; however, they were not agreeable to pay for any prior city utilities or have the utilities in their name as this is a shared service. The tenant stated the landlord rejected their offer, and their settlement offer is rescinded.

The tenants testified that on March 26, 2021, the landlord served them with a 10 Day Notice to End Tenancy for Unpaid Utilities, in the amount of \$745.38, despite the original demand of being \$624.38. The tenants stated that they paid the amount of \$639.38 and they also paid the landlord the amount of \$78.04 for December 2020 – February 2021 utilities as they were expecting the landlord to accept their proposal. The tenants want the landlord to comply with the tenancy agreement that city utilities are not included in the rent and they want the amount they paid to be returned.

The tenant testified that they are seeking a monetary order for electricity used by the landlord. The tenants stated that it is unreasonable that the landlord would not be responsible to pay for electricity they consume.

The tenants testified that the landlord has always parked their travel trailer on the property. The tenants stated that the trailer was plugged into an extension cord going to the garage. The tenants stated that in January 2021, when a water pipe broke they discovered that they were paying for the electricity consumed by the landlord.

The tenant stated that they requested the landlord to purchase an electricity monitor to measure the amount of electricity consumed when the landlord's trailer is plugged in to get the daily average of kwh rate for the period of May 31, 2019 to February 27, 2021. However, the trailer was removed on March 29, 2021, and a calculation was never provided by the landlord. The tenants stated that they claimed the amount of \$300.00; however, this was a guess as the landlord would not provide them with the requested information.

The landlord testified that there were two original copies of the tenancy agreement. The landlord stated that on page two of the tenancy agreement at 3. Rent shows that the water was not included in the rent; however, the garbage collection was included as they had already paid the initial fee.

The landlord testified that they admit that in the addendum they had drawn a line through the tenants copy, not requiring them to pay for the city utilities because the other occupants were not paying any portion; however, it was not the intent that the tenant would never have to pay for these utilities. The landlord stated that their copy was never changed.

The landlord testified that they never had their trailer plugged in 24/7 and the only time they used the power was to test the battery prior to taking the trailer on holidays.

The tenants argued that both copies of the addendum were changed at the same time.

Analysis

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

In this case, I have reviewed the tenancy agreement, I find the city utilities were included in the rent. While I accept that the water was not checked off on page two of the tenancy agreement; however, the addendum and the testimony of both parties' support this was removed from the tenancy agreement at the start of the tenancy. I find the landlord cannot change the term of the tenancy agreement, without the written consent of the tenants and cannot make a tenant pay extra for services already included in the rent.

Furthermore, this tenancy commenced on May 31, 2019, I find it unreasonable that the issue of the city utilities was only raised by the landlord with the tenants in December 2019 and when the tenants informed the landlord that this was included in the rent that the landlord remained silent for almost one year, as it was not until November of 2020 that the landlord again asked for the utilities to be paid.

In this case, the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Utilities on March 26, 2021. The evidence of the tenants that they paid the amount of \$639.38 for utilities to ensure the notice was cancelled, the tenants also paid the amount of \$78.04 in the hopes the landlord would accept their offer to settle the matter. As I have found the city utilities are included in the rent, I find the tenants are entitled to recover the amount paid to the landlord for these utilities in the total amount of **\$717.42**.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states the following:

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 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

In this case, the landlord has kept their travel trailer on the property, I find this is not a breach of the Act, as the tenants do not have exclusive possession of the entire property and this was there when their tenancy commenced and has been there for approximately 20 months, although removed from time to time when used by the landlord. However, I find it would be unreasonable for the tenants to pay for any electricity it may have used.

The evidence of the landlord was it was only plugged in to test the battery; however, I find that highly unlikely because a battery is its own source of energy and often has their own system for testing or viewing the battery level.

While I do not believe a travel trailer would consume a large amount of electricity as it is not being lived in, I do not find the tenants request of \$300.00 unreasonable because when averaging the time period from June 2019 to March 2021 (20 months) this amount equals \$15.00 per month. The landlord provided no evidence of what the consumption of electricity it would consume when plugged in on a full-time basis for me to considered. Therefore, I find the tenants are entitled to recover electricity that was used by the landlord in the amount of **\$300.00**.

Based on the above, I find the tenants have established a total monetary claim of **\$1,217.42** comprised of the above amount and the cost to recover the \$100.00 filing fee.

As the tenancy is ongoing, I find it appropriate to grant the tenants a one time rent reduction from September 2021, rent owing to the landlord in full satisfaction of this claim. ($\$2,400.00 - \$1,217.42 = \$1,182.58$.) This means the tenants are only required to pay the amount of \$1,182.58 for September 2021, rent.

Conclusion

The tenants' application is granted. The tenants are granted a monetary order to recover the cost of utilities included in the rent and utilities consumed by the landlord. The tenants are granted a one-time rent reduction in full satisfaction of this award.

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: July 23, 2021

Residential Tenancy Branch