



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC FFT

Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; 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 sworn testimony, to make submissions and to call witnesses. The landlord was assisted by a family member.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This fixed-term tenancy began on August 15, 2020. Monthly rent is \$1,500.00 payable on the first of each month. A security deposit of \$750.00 was paid at the start of the tenancy and is still held by the landlord. The electrical utilities are not included in the monthly rent. A term of the tenancy agreement provides that the tenant is responsible for paying 25% of the electrical utilities for the rental property. The rental unit is a basement suite in a detached home with the landlord's family occupying the main floor.

The parties agree that the landlord has not made demand for payment of utilities throughout the tenancy until May 28, 2021 when the landlord texted that they would be collecting the amount owed for the tenancy to date. The parties agree that the landlord first made demand for the utilities in July 2021. The parties submit that the landlord provided a figure of \$400.00 as the portion of the utilities payable for the tenancy to date. The tenant subsequently requested and was provided with the bills from the utility company for the period of the tenancy showing the actual amounts charged.

The landlord submits that this is their standard practice to issue one demand at the end of the tenancy for payment of the utilities. The landlord takes the position that the Act and regulations do not require a landlord to periodically demand and collect utilities and their tenancy agreement is silent on when the utilities will be payable. The landlord says that their standard practice of issuing one demand per annum for a lump sum payment of the utilities is not a violation of the Act, regulations or tenancy agreement.

The tenant takes the position that the landlord has failed to request payment of utilities for nearly a full year and they are estopped from enforcing the term of the tenancy agreement requiring payment of utilities. The tenant says that the landlord did not raise the issue of the utility payments until it became time to negotiate a new fixed-term tenancy. The tenant submits that they relied upon the landlord's failure to require payment of utilities to calculate their budget and it would be unfair for the landlord to make a sudden demand of the full year's utility payments now.

Analysis

The tenant seeks an order that the landlord comply with the Act, regulations or tenancy agreement and says that the landlord should be estopped from demanding payment of utilities as they failed to make demands in a timely basis. Based on the totality of the evidence the present circumstances, I find the tenant's submissions have some merit.

While the Act and regulations are silent on when a landlord may make demand for utilities section 13(2)(f) provides some of the terms that an agreement may contain, including at subsection (v) "the day in the month, or in the other period on which the tenancy is based, on which the rent is due".

The signed tenancy agreement shows that monthly rent is payable on the first of each month. It would be reasonable to expect that payment of utilities would coincide with the monthly rent payment, or at the time that the utility company provides bills. While the agreement states that the tenant is responsible for paying 25% of the utilities for the property the document is silent as to when the payments would be demanded or come due.

The tenant submits that they did not agree to annual payment of utilities and I find the documentary evidence of the parties, including correspondence supports this position. If there was an agreement between the parties that the utilities would be paid in an annual lump sum at the end of the tenancy it would be reasonable to expect that the parties would reference such an agreement in their correspondence. Instead, the text of the correspondence clearly demonstrates that the tenant was unaware of this expectation until demand was made over 10 months after the start of the tenancy. While this may have been the landlord's intention from the outset of the tenancy, the tenancy agreement does not indicate that utilities would be charged as a lump sum payment at the end of the fixed-term. I find it would be inequitable to allow the landlord to rely upon the silence in the tenancy agreement they prepared and interpret it in a manner that benefits them.

Pursuant to the section 13(2) of the Act I find it appropriate to order that the landlord comply by setting out in writing the period when utilities will be due within the tenancy agreement.

I further find sufficient evidence to support the tenant's position that the landlord is estopped from demanding past utilities in this circumstance.

Estoppel is a legal principle whereby a party is barred from enforcing a contractual right when it is inequitable to do so due to the party's previous conduct or representations.

In order to successfully raise an estoppel defence, the party seeking to defeat the rights of the other must show:

1. that the party seeking to enforce their legal rights, took some action, whether by representation or conduct, with the intention that the other party rely on that action; and
2. the other party relied on that action to its detriment changing their course of action based on the representation.

In the present case I find sufficient evidence that the landlord failed to inform the tenant that utilities would be payable at the end of the tenancy and the parties conducted themselves throughout the majority of this tenancy without expectation that utilities would be payable. I find that the conduct of the landlord during the initial months of this tenancy until May 28, 2021 effectively served as an implied waiver of their right to payment of electrical utilities.

I accept the tenant's submission that they relied upon the representation by the landlord to their detriment by calculating their monthly budget and adjusting their spending on the belief that utilities would not be charged for this tenancy.

I am satisfied based on the evidence of the parties that the tenant relied upon the previous conduct of the landlord to their detriment, and it would be inequitable to allow the landlord to now enforce their contractual right to demand the electrical utilities. Accordingly, I find that the landlord is estopped from seeking payment of the electrical utilities under the tenancy agreement signed by the parties on August 7, 2020.

As the tenant was successful in their application they are entitled to recover the filing fee from the landlord. As this tenancy is continuing the tenant may satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenant's application is successful. The landlord is ordered to comply by setting out in writing in the tenancy agreement the period when utilities will be payable.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: January 10, 2022

Residential Tenancy Branch