



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homax Real Estate Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. The Tenant applied on November 22, 2021 for:

- an order for the Landlord to comply with the Act, regulation, and/or the tenancy agreement; and
- the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified he served the Notice of Dispute Resolution Proceeding (NDRP) and his evidence on the Landlord by registered mail on November 26, 2021, which the Landlord's agent ("the Landlord") confirmed he received. I find the Tenant served the Landlord in accordance with section 89 of the Act.

The Landlord testified he served his responsive evidence on the Tenant by email on March 4, 2022, which the Tenant confirmed. I find the Landlord served the Tenant in accordance with section 88 of the Act.

Issues to be Decided

- 1) Is the Tenant entitled to an order for the Landlord to comply with the Act, regulation, and/or the tenancy agreement?
- 2) Is the Tenant entitled to the filing fee?

Background and Evidence

Those present agreed on the following particulars of the tenancy. It began March 20, 2019; rent is \$1,250.00, due on the first of the month; and the Tenant paid a security deposit of \$625.00, which the Landlord still holds. The property is a detached home, and the Tenant rents the basement unit.

The Tenant testified that utilities are not included in the tenancy agreement, and that when he moved in, he and the landlord made a verbal agreement that the Tenant would pay \$50.00 per month in utilities for his basement unit. The Tenant testified that the utilities are comprised of hydro and Fortis.

A copy of the original tenancy agreement is submitted as evidence; it indicates that no utilities are included in the rent, but is otherwise silent on the payment of utilities in this tenancy.

The Tenant testified that about a year ago a new landlord took over the property, and told the Tenant that he owes 20 percent of the overall utilities for the property, and that the Tenant has underpaid by about \$600.00.

Submitted as evidence is a 30-day demand letter, dated November 19, 2021, in which the current Landlord states that the Tenant owes \$519.97 for utilities.

The Tenant testified that the new landlord did not discuss this increase with the Tenant before demanding it.

The Tenant testified that under the previous landlord, he would make monthly e-transfer payments of \$1,300.00, comprised of \$1,250.00 for the rent, and \$50.00 for the utilities.

The Landlord testified that they took over the tenancy agreement from the previous landlord in May or June of 2019, and were not aware that there was no split for the utility costs articulated in the tenancy agreement.

The Landlord testified they had “no idea” about the Tenant’s verbal agreement with the previous landlord, and testified they did not discuss making a change to the amount of utilities charged to the Tenant before implementing the change. The Landlord testified that the owner made the decision, based on the size of the upper and basement units, and the number of occupants, that the Tenant should pay 20 percent of the total utilities, and the tenants in the upper part of the home, 80 percent.

The Landlord testified that he agrees with the Tenant's testimony that the Tenant previously paid \$50.00 a month for utilities.

Analysis

The Tenant is seeking for the new Landlord to honour the verbal agreement he made with the previous Landlord, for the Tenant to pay \$50.00 a month for utilities for his basement unit.

Based on the affirmed undisputed testimony of the Tenant, I find that the verbal agreement he struck with the previous landlord is a term of his tenancy agreement, though it is not in writing.

This is supported by the testimony of the current Landlord, who submitted he agrees with the Tenant's testimony that the Tenant previously paid \$50.00 a month for utilities.

Section 14 of the Act states:

Changes to tenancy agreement

14 (1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Section 13(2) of the Act [*Requirements for tenancy agreements*] states that a tenancy agreement must include the standard terms, which are found in the Schedule section of the Residential Tenancy Regulation.

Section 1(2) of the Schedule section of the Residential Tenancy Regulation states:

(2) Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable.

The Tenant and Landlord agree that the Landlord did not consult the Tenant before increasing his utility charges, and the Tenant has testified that he does not agree to the increase.

Therefore, I find that the Landlord's decision to increase the Tenant's utility charges is not enforceable, in accordance with section 14(2) of the Act, and section 1(2) of the Schedule.

There is nothing prohibiting the Landlord and Tenant from reaching a new agreement regarding the payment of utilities, but the agreement must comply with section 1(2) of the Schedule.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant is successful in his application, I order the Landlord to pay the \$100.00 filing fee the Tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the Tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The Landlord's increase in the Tenant's utilities charges is not enforceable.

The Tenant's utility charges will remain at \$50.00 a month unless he and the Landlord both agree to update the tenancy agreement in writing to a different amount, and the change is initialed by the Landlord and the Tenant, pursuant to section 1(2) of the Schedule.

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 29, 2022

Residential Tenancy Branch