



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 an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant SN attended on behalf of both tenants ("the tenant"). The lawyer TB attended for both landlords who did not attend ("the landlord"). Both attendees had the opportunity to provide affirmed testimony, submit evidence and call witnesses. The hearing process was explained.

The parties confirmed the email address to which the Decision shall be sent.

Each party acknowledged receipt of the material submitted by the other party. I find each party served the other in accordance with the Act.

Preliminary Issue – Settlement

I explained to the parties that under section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute. If the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

The parties spent considerable time discussing possible settlement. They did not reach agreement.

Accordingly, the hearing continued.

Issue(s) to be Decided

Is the tenant entitled to the following:

- An order requiring the landlord to comply with the *Act* pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

This is an application by the tenant for an Order requiring the landlord to transfer the hydro for the building in which the unit is located to the landlord. The tenant also claimed compensation for overpayment of their share of the utility fees.

The tenant submitted a copy of the tenancy agreement. They stated the tenancy began on September 1, 2020. Rent is \$2,000.00 monthly. The tenant paid a security deposit of \$1,000.00 to the landlord at the beginning of the tenancy that the landlord holds.

The tenant explained the rental property is a house with two suites. The tenant's unit is the upper level. There is an apartment in the lower level.

The tenant testified regarding the history of the hydro account for the building as follows. There is only one meter for the building. Throughout the tenancy, the hydro account has been in the tenant's name.

From the beginning of the tenancy to November 1, 2021, the tenant stated they paid all hydro utility bills for the building including the occupied lower apartment. The annual payment is made on an equal payment plan.

On November 1, 2021, the tenant testified they began paying 50% of the utility bills. The landlord reimbursed the tenant for 50% of the monthly payment, not on the total amount of the invoice.

On December 1, 2021, new occupants moved into the lower apartment. The tenant reported a sharp increase in power consumption and, accordingly, the utility bills. The monthly payment is increasing. The tenant testified they are stressed and upset by the increasing consumption caused by the downstairs apartment.

The tenant claimed that it was no longer fair that utility bills be divided evenly between the two households. The tenant requested compensation for overpayment from the time the December 1, 2021.

The tenant requested the utility account be transferred to the landlord immediately.

The tenant requested a more equitable division of responsibility between the two households and suggested the tenant pay 25% of the hydro bills from December 1, 2021.

The landlord did not agree that the utility account be transferred to the landlord or that the proportionate payment be changed. The landlord submitted written submissions and argument that the tenant was consuming half the power, the tenant was receiving benefits for which they were not paying compensation, and the tenant had ulterior motives towards the occupants of the lower residence.

Analysis

Residential Tenancy Policy Guideline # 1 provides, in part:

Shared Utilities 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.

The Regulations define "unconscionable". Section 3 states that a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

Section 6(3)(b) of the Act provides that a term of a tenancy agreement is not enforceable if the term is unconscionable.

The landlord has required that the electricity account for the building be placed in the tenant's name since the beginning of the tenancy, that the tenant pay the invoices, and the landlord reimburse the tenant 50% of the equal monthly payment amount.

The building includes an apartment which is not occupied by the tenant.

I accept the tenant's credible evidence which I found reasonable and convincing. I find that it is unfair and unconscionable that the tenant is required to have the hydro account for the entire building in their name when there is another occupied apartment. The landlord offered no plausible explanation for why the account cannot be transferred to them.

I find it is oppressive to expect the tenant to pay the utilities for the entire building in the circumstances and to carry an accumulating balance. I accept the tenant's evidence that they no longer consent to the account being in their name.

I have considered the evidence, the Act and the Policy Guideline. I find the tenant has met the burden of proof on a balance of probabilities with respect to their claim.

Accordingly, I order that the landlord transfer the hydro account for the building to their name as quickly as possible, but in any event by July 15, 2022 at 5:00 PM.

The tenant has not applied for a monetary award. I grant the tenant leave to reapply for compensation for any overpayment of utilities.

The tenant is granted an award of \$100.00 for reimbursement of the filing fee which may be deducted from rent on a one-time basis.

Conclusion

I order that the landlord transfer the hydro account for the rental property to their name as quickly as possible, but in any event by July 15, 2022 at 5:00 PM.

The tenant is granted leave to apply for a Monetary Order including compensation for overpayment of utilities.

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: June 30, 2022

Residential Tenancy Branch