



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FDG PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, FFT

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

Issues

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to a monetary compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on August 1, 2018 with monthly rent currently set at \$2,224.00, payable on the first of the month. The landlord collected, and still holds, a security and pet damage deposit in the amounts of \$1,085.00 each deposit.

The tenant filed this application for reimbursement of cold water and sewage costs retroactive to 2018 and ongoing. The tenant testified that their former partner used to manage and pay the bills through automatic withdrawal, and as a result, the tenant did not realize the extra charges until they took over management of the bills.

The tenant notes that the written tenancy agreement signed on July 19, 2018 clearly states that cold water is included in the monthly rent. The tenant also notes that they have been charged for sewage when the tenancy agreement makes no mention that this utility is not included. The tenant argued that the tenancy agreement states "For clarity, Rent does NOT include electricity...radiant hot water...cablevision...or WIFI internet". The tenant testified that the landlord had confirmed with other tenants that they had incorrectly noted that cold water was included, and had reimbursed other tenants to honour the mistake. The tenant testified that they have not received any reimbursement or compensation. The tenant provided a copy of the bills dating back to October 18, 2018, as well as a monetary worksheet requesting a monetary order for the cold water and sewage bills paid, and requests that going forward that these amounts be deducted from the monthly rent.

The landlord testified that the municipality had amended the bylaws effective October 1, 2018, and as of that date tenants were responsible for cold water and sewage charges, as allocated per unit. The landlord acknowledged that some tenants were provided credit for cold water charges upon request, but that the tenant did not make any requests despite the notifications they received about the changes. The landlord argued that the tenants had signed a new agreement, which notified them that their utility bills would now include cold water and sewage charges on a per unit basis. The landlord submitted a copy of a document titled "Application for Billing Services" effective August 1, 2018, which was signed on July 19, 2018 by the tenant's former partner KR. The application stated that "The Tenant hereby makes application for billing services

account and understands he/she will be billed for heat, hot water, and cold water supplied to their unit”.

The landlord also submitted a copy of a letter dated October 1, 2018 regarding “cost allocation changes” notifying the account holder that as a result of bylaws recently brought in, water and sewer charges are now allocated equally between units, which includes heating, hot water, and cold water. The landlord argued that the tenant should have known of these charges as they were communicated to them, and which the tenants had paid without any issue. The landlord further argued that water is not billed per consumption where cold and hot water was billed separately, and the municipality charges each tenant a per dwelling rate instead, which the tenant is responsible for.

Analysis

In considering the tenant’s claims, I note that there were originally two tenants on the tenancy agreement. The applicant is the remaining tenant residing in the rental unit as the other tenant has moved out.

Residential Tenancy Policy Guideline #13 clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

“A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.”

In this case, the other tenant managed and paid all the bills, which were paid through automatic withdrawal. The tenant applicant acknowledges that they did not pay much attention until the other tenant moved out, and the tenant applicant took over the management of the bills. Upon review, the tenant applicant noted some discrepancies between their understanding of what should be included, and what the tenants were actually paying for.

The landlord argued that the tenants were provided notice and communication about the changes in billing, and that although the cold water was originally noted as an

included utility on the tenancy agreement, this was done so in error. The landlord also argued that despite the communication to the tenants back in 2018, the tenants continued to pay their bills in full without any issues. The landlord further argued that cold water was not being billed separately, nor on a consumption basis. The landlord argued that these changes were initiated by the municipality, and were not additional fees that the landlord was billing for.

In review of the evidence and testimony before me, I note that the written tenancy agreement does stipulate that cold water is included in the monthly rent. Where changes are made to the tenancy agreement, section 14 of the Act states the following requirements;

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.

(3)The requirement for agreement under subsection (2) does not apply to any of the following:

(a)a rent increase in accordance with Part 3 of this Act;

(b)a withdrawal of, or a restriction on, a service or facility in accordance with section 27 [*terminating or restricting services or facilities*];

(c)a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

In this case, I find that the tenants not only received notification of the change in billing by the municipality, the tenants established a long history of accepting and paying for these bills without any issue. By doing so, I find that the tenants have established and implied acceptance of the change in the terms of the tenancy agreement, specifically that the tenants would be responsible for paying the utility charges related to water and sewer costs. Although the tenant applicant denies knowledge of this letter and the changes, I find that the co-tenant managed the bills on behalf of both parties, and therefore they had acted on behalf of both tenants. As the letter was dated October 1, 2018, I find that the landlord should still be held responsible for the cold water charges before this change was communicated to the tenants. Accordingly, I allow the tenant a reimbursement of \$22.68 for the cold water as reflected on the bill dated October 18, 2018.

As stated above, I find that the tenants were communicated the changes effective October 1, 2018, and accepted these changes by implied consent. Accordingly, I dismiss the tenant's application for reimbursement for water charges after October 1, 2018 without leave to reapply.

I note that the tenants were charged a separate sewer charge of \$18.62 on the October 18, 2018 bill. As noted by the tenant the tenancy agreement does not stipulate that the tenant is responsible for sewer charges. The tenancy agreement is silent about whether sewer costs should be born by the landlord or the tenant. In review of the tenancy agreement, I note that the tenancy agreement is clear about what is included in the monthly rent, which had included cold water. The additional paragraph appears to be included "for clarity" as stated on the tenancy agreement. I do not find the additional terms to be an absolute nor definitive list of what the landlord must or should include; otherwise "sewer" would have included in the section "rent includes". As stated on the tenancy agreement, this paragraph is to add clarity. Furthermore, as stated above, I find that the former co-tenant had clearly accepted responsibility for sewer costs as demonstrated by the long history of payments for this utility. For these reasons, I dismiss the tenant's application to recover any sewer costs without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, and the tenant was only partially successful in his claim, I allow the tenant to recover half of the filing fee. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$50.00.

Conclusion

I allow the tenant a monetary order in the amount of \$22.68 as reimbursement for the cold water charge as reflected on the October 18, 2018 utility bill.

I allow the tenant to recover half of the filing fee for this application.

I allow the tenant to implement the above monetary awards by reducing a future monthly rent payment by \$72.68. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$72.68 and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application is dismissed without leave to reapply.

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 01, 2022

Residential Tenancy Branch