



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent or utilities - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm receipt of each other's evidence.

Issue(s) to be Decided

Is the Landlord entitled to the compensation claimed?

Is the Landlord entitled to recovery of the filing fee?

Relevant Background and Evidence

The following are agreed facts: The tenancy under written agreement started on June 1, 2019 and ended on May 31, 2020. During the tenancy rent of \$2,200.00 was payable on the first day of each month. The security deposits have been dealt with. The rent did not include utilities. The addendum to the tenancy agreement includes a term related to the Landlord's portion of utilities payable (the “Term”) as follows:

The landlord and tenant agree that when the landlord resides in the lower floor, the amount paid towards electric ...and city bills (garbage and water) will equal either \$20/month for his full share, or be based on usage compared to same

month of the previous 2 years (averaged), at the landlord's discretion. The tenant will pay the balance including "meter off" charges. (reproduced as written)

The Landlord claims unpaid water bills of \$915.31 for the period January 3 to April 28, 2020 and \$110.00 for the period April 28 to May 31, 2020.

The Tenants state that they were not clear on the Term other than the Landlord paying \$20.00 monthly for the Landlord's use. The Tenant states that during the tenancy the Landlord stayed at the unit longer than was originally expected. The Tenant states that they expected an occasional stay, but the Landlord was there continually. The Tenant states that the Landlord used extra utilities by its use of the lower floor and by having a large garden in the back. The Tenant states that during the tenancy a pipe burst causing water to pour for a few weeks and that although repairs were made they were incomplete as water continued to shoot out of the pipe to the end of the tenancy.

The Landlord states that the lower floor does not have a bath or shower and that water usage was only available from a laundry tub. The Landlord states that the watering of the garden was on a low-usage system without any surface spraying. The Landlord states that there was no burst pipe and that the problem arose with the sump system that drained to the yard. The Landlord states that this water problem did not cause any excess usage of water and that no leak had been found. The Landlord states that the city made an inspection shortly after the tenancy ended to confirm that no leak was present.

Analysis

Section 6(3)(b) and (c) of the Act provides that a term of a tenancy agreement is not enforceable if the term is unconscionable or if the term is not expressed in a manner that clearly communicates the rights and obligations under it. The evidence is undisputed that the Landlord used the lower area more than the Tenants expected. There is undisputed evidence that there was some disruption of a water system during

the tenancy. The Term does not address usage by the Landlord and only vaguely sets out “when the landlord resides in the lower floor” with a set amount regardless of usage. If there was an excess use of water, whether by the Landlord’s use or by the failure of a water system during this tenancy, the Term allows the Landlord to escape responsibility for those extra costs “at the landlord’s discretion”. For these reasons, I find that the Term is too vague to clearly set out the right and obligations of the Parties and that the Term is unconscionable as a one-sided term and as term that acts to limit the Landlord’s own costs. As the Term is not enforceable for these reasons, I dismiss the Landlord’s claim for compensation.

As the Landlord’s claim has not been successful I also dismiss the claim for recovery of the filing fee and in effect the Landlord’s application is dismissed in its entirety.

Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 22, 2023

Residential Tenancy Branch