



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement, an Order for the landlord to comply with the *Act*, regulation or tenancy agreement and a Monetary Order to recover the filing fee.

The tenant served the landlord with a copy of the Application and Notice of Hearing. The landlord confirmed he had received this. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to an Order to ensure the landlord complies with the *Act*, regulations or tenancy agreement?
- Are the terms in the tenancy agreement unconscionable or not expressed in a manner that communicates the rights and obligations under it?
- Are the tenants entitled to a Monetary Order for loss or damage under the *Act*?
- Are the tenants entitled to recover the cost of filing their application?

Background and Evidence

This tenancy started on December 08, 2008. This was a fixed term tenancy for six month ending on June 06, 2009 and has since reverted to a month to month tenancy. Rent is \$1,200.00 per month due on the 1st of each month. The landlord occupies the upper portion of the property for

Residential Tenancy Branch
Ministry of Housing and Social Development

part of each week. This consists of three bedrooms, three bathrooms and a living room although the landlord only uses one of the bedrooms and bathrooms. The landlord does not have access to the kitchen facilities but does have a fridge/freezer, hotplate, gas fire, microwave, television and laptop. The tenants have use of 2 bedrooms, family room, kitchen and two bathrooms.

The tenancy agreement has an addendum which includes a section stating that the tenants are responsible for their utilities. However this term is unclear as it does not state what percentage of the utilities are paid by the tenants and which are paid by the landlord. The tenants are requesting the landlord express this term in the agreement in a manner which is clear to both parties.

The total utility bills come to \$1,734.80 for the time the tenants have lived at the property. The tenants have paid a total amount of \$2,055.00 which is over and above the total amount of the Utility bills. They are requesting the landlord pays a fair share of the bills and they are reimbursed for the additional amount they have paid.

The landlord has provided a copy of the utility bills for the gas, hydro, water and sewage into evidence. The landlord disputes that he should have to pay an equal percentage of the bills as he is not living at the property full time. However, he does confirm that the heating is on and he operates some electrical equipment such as the fridge/ freezer full time.

Analysis

The Residential Tenancy Act section 6(3) states that:

- (3) A term of a tenancy agreement is not enforceable if
 - (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

I find that the terms and conditions of the tenancy agreement is unconscionable and is not expressed in a manner that makes it clear what percentage of the utility bills the tenants are responsible for. Therefore this term in the agreement is not enforceable. However, the tenants have agreed to pay 50 percent of the gas and hydro bills and two thirds of the water and sewage bills. As the tenants have overpaid on the total of the utility bills to date I find they are entitled to a Monetary Order to recover the overpaid amount taking into account the percentage share as agreed between the landlord and tenant at this hearing. The total amount owing to the tenant is \$1,130.19.

The landlord and tenant must amend the tenancy agreement to clearly state the terms and conditions agreed upon at this hearing for the percentage amounts each party will pay for the utilities in the future as detailed above.

As the tenant has been successful in their application they are entitled to recover the filing fee of \$50.00 from the landlord.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,180.19**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

I further Order that the landlord amends the tenancy agreement to ensure the terms contained within it are expressed in a manner that makes it clear what percentage of the utility bills the tenants are responsible for as detailed above.

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: July 10, 2009.

Dispute Resolution Officer