Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC and FF

Introduction

This application was brought by the tenants seeking monetary compensation for overpayment of utilities and an order that the landlord comply with the legislation to correct a portion of the rental agreement requiring the tenants to put utilities in their name for both of the two units in the rental building.

Issue(s) to be Decided

This matter requires a decision on whether the tenants are entitled to a monetary award and whether an order for compliance is in order.

Background and Evidence

The tenancy, in the upper portion of the two unit rental building, began on May 1, 2011 under one year fixed term agreement set to end on April 30, 2012. The agreement selected the option which continues the tenancy month to month at its conclusion. Rent is $1,400 per month and the landlord holds a security deposit of $700 paid on May 1, 2011.

Item 5 under an addendum to the agreement states that:

> "You are responsible for heating (oil), electrical bills and water for the whole house, to compensate for the basement suite, the landlord is paying for cable and wireless internet, as well as a decrease in the rent from $1,450 to $1,400 to compensate for the basement utilities."

The tenants submit that this provision is unconscionable in that it requires them to have the utilities in their name, the share of utilities used by the downstairs tenants far

exceeds the value of the $50 per month rent discount plus the value of the wireless internet and cable which they have never used.

The tenants stated that in the nearly one year since the tenancy began, they have paid $2,700 in utilities, and allege that the lower tenants are excessive and careless in their used of utilities.

The tenants have asked for a credit equal to 40 per cent of their outlay, an Order that the landlord put the utilities in her name, and that further utilities bills be apportioned as 60 per cent for their upper unit and 40 percent for the lower unit. They ask for a further adjustment for April 2012 as there is a third adult staying in the lower unit as compared to the usual population of two adults in the each of the units.

The landlord stated that the arrangement has been balanced as the applicant tenants occupy a 1,300 square foot unit and the tenants occupy 600 square feet. In addition, she notes that the upper tenants have exclusive use of the back yard and consumer substantially more water.

Analysis

Section 6(3) of the Act provides that:

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

In the present matter, I find that the requirement of the rental agreement that makes the upper tenants responsible for the utilities payments of the lower tenant is inconsistent with the *Act* and unconscionable to the extent that it make the upper tenants responsible for the lower tenants over whom they have no control.

In addition, given that the landlord did not contest the tenants' claim of having paid $2,700 in utilities over the one-year agreement, I find that the

$50 rent reduction is “grossly unfair” to the tenants, part of the definition of unconscionable at *Regulation* 3.

Accordingly, as authorized by section 65 of the *Act*, I **hereby order** that the landlord put the utilities in her name by May 1, 2012 and that costs be apportioned between the tenants in a ratio of 65 per cent for the upper tenants and 35 per cent for the lower tenants.

I further find that the tenants are entitled to recover the overpayments of utilities from the beginning of the tenancy.

The parties agree that the tenants have paid approximately $2,700. I find that they have recovered $600 of that by virtue of the $50 rent reduction. I further find that their rightful share of that remaining $2,100 is (.65 x $21,00) = $1,365. Therefore, I find that the tenants are entitled to recover ($2,100 - $1,365 = $735.

I have not taken water usage into account as yard maintenance is as beneficial to the landlord as to the tenants. In addition, I have not factored the wireless or cable use as those are matters the tenants ought to have dealt with before signed the rental agreement and I have not factored in the third party staying in the lower unit as tenants are entitled to host guests under the *Act.*

I find that as the application has succeeded on its merits, the tenants are entitled to recover the filing fee for this proceeding from the landlord, resulting in a total award to the tenants of $785.

I hereby order that the tenants may recover that amount by withholding $785 from the rent due on May 1, 2012.

Conclusion

1. The landlord must put utilities in her name by May 1, 2012.

2. In future, utilities costs are to be apportioned as 65 percent for the upper tenants and 35 percent for the lower tenants.

3. The tenants may withhold $785 from the rent due on May 1, 2012 to recover the overpayment of utilities and their filing fee for this proceeding.

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: April 20, 2012.

Residential Tenancy Branch