Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Penticton Apartments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OLC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested Orders that the landlord comply with the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Has the landlord given the tenant Notice Terminating or Restricting a Service or Facility in accordance with the Act?

If the Notice has not been given in accordance with the Act, what is the current rent owed monthly?

Are any other Orders required?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced in 2003; a copy of the signed tenancy agreement was supplied as evidence. The agreement did not include the amount of rent owed or any information on payment of utilities. The tenant submitted that the inclusion of hydro

costs as part of the rent formed a critical part of the tenancy as it would provide assurance of the monthly costs to be paid.

There was no dispute that the rent, effective November 2012 was $625.00 per month, due on the 1st day of each month. There was no dispute that throughout the tenancy hydro costs have been included as a term of the tenancy and no payment of hydro costs have been made by the tenant.

The tenant submitted that on or about October 31, 2012 an energy company, E.S.C. issued a letter to the tenant indicating that the company had assumed responsibility for management and maintenance of the electricity for the apartment complex. A copy of the letter was supplied as evidence and it contained the following points:

- that effective December 1, 2012 E.S.C. would begin invoicing tenants for hydro consumption;
- that invoices would be paid directly to E.S.C.;
- that rates charged are established by Penticton Power and meters for consumption meet Measurement Canada approval;
- that the tenant's energy consumption had been tracked and that the tenant's rent would be reduced by $60.00 per month accordingly;
- that the rent reduction would come into effect in December;
- that the landlord had absorbed the activation fees; and
- that the tenant could forward questions regarding the account to E.S.C. directly.

The letter given to the tenant did not include the landlord's name or phone number; it was not dated or signed and did not include the name of a specific contact person. The letter did not identify the tenant specifically but referred to "occupant of 115." There were no special instructions included for the tenant, such as what kind of services can be terminated or restricted, or how the tenant could dispute the Notice.

The tenant submitted that E.S.C. does not meet the definition of landlord, in accordance with the Act. As E.S.C. is not the tenant's landlord, the company did not have authority to issue the letter altering the term of the tenancy.

The tenant stated that the letter given in October did not meet the standard of the approved form (#RTB – 24.)

On December 15, 2012 and again on January 2, 2013 the landlord asked the tenant to sign an energy services agreement; the tenant refused to sign the documents. The landlord told the tenant if she refused to pay for her future electricity consumption she could be evicted. The tenant was then issued a Notice of Rent Increase; it was not in dispute that the rent increase was valid, only that the timing of Notice appeared to be somewhat retaliatory.

The tenant submitted a copy of an electricity invoice for December 2012 in the sum of $134.64 and a 2nd invoice for January 2013 in the sum of $125.07. The tenant's written submission indicated that the amounts charged exceeded the sum the landlord had indicated would be reduced from the rent owed each month.

The parties agreed that since the dispute in relation to hydro cost notification began the tenant has continued to pay $625.00 per month rent and that hydro service has not yet been altered.

The tenant has asked that the landlord be Ordered to:

- issue a Notice Terminating or Restricting a Service of Facility on the approved form;
- pay any hydro cost until such time as proper Notice of the service termination is given to the tenant;
- provide a 12 month equal payment plan for electricity; and
- explain why the tenant appears to have been targeted for a rent increase.

The landlord stated that the letter was given to the tenant as they have asked E.S.C. to manage the hydro on the landlord's behalf. The landlord agreed that advance notice had not been given to the tenant, informing her of the assignment of an agent for this purpose.

The landlord pointed to section 10 of the Act, which provides:

> ***Director may approve forms***
>
> ***10*** *(1) The director may approve forms for the purposes of this Act.*
> *(2) Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used*

The landlord said that section 10 supported the letter given to the tenant and that it should meet the standard of the form approved by the Residential Tenancy Branch (RTB.)

The landlord said that they were not terminating the service and that the restriction of service was in relation to a billing issue. The service provider had estimated the use of hydro by the tenant, since meters were installed in August 2012. An estimate of usage was then used to set the amount of corresponding rent reduction the tenant should be given. The landlord offered to revisit the issue of cost if, over a period of a year, the rent reduction given did not average out to an appropriate sum. The landlord has accepted the assessment made by E.S.C. that the rent reduction that has been offered to the tenant was adequate.

The letter given to the tenant on October 31, 2012 was meant as an introduction to the hydro service provider and notice was not given on the RTB form, as the landlord was not aware of that form at the time. The landlord said they are not attempting to hide anything and that they have only switched hydro service providers. The landlord is not planning on terminating services as hydro in Penticton cannot be accessed by individual customers when they live in apartment complexes.

The landlord stated that the only method available to them in relation to altering hydro service is to consider the issue one of termination or restriction of the service.

In relation to the Notice of Rent Increase the landlord said that not all rents may be increased at the same time each year; this is dependent upon the date of the last increase given. The tenant was not targeted but was due for an annual Notice of increase and an extra month's notice was provided.

During the hearing there was discussion in relation to the intention of the landlord; whether the hydro service was being restricted and how any restriction might be interpreted.

Analysis

I find that the parties had agreed to the inclusion of hydro as a service, from the start of this tenancy in 2003. The tenant has never paid hydro costs, which have always been provided as part of the total rent paid.

In relation to the authority of E.S.C. to give the tenant the letter which attempted to alter the term of the tenancy; the tenant could not confirm whether the landlord personally delivered that letter or if it was delivered by another method. The landlord testified that he had gone to the rental unit and hand-delivered the letter on October 31, 2012 and I have accepted his affirmed testimony in relation to delivery.

The landlord decided to have E.S.C., as their agent, to issue the letter to the tenant, informing her of the change in hydro cost payment. The Act defines a landlord as:

> ***"landlord"**, in relation to a rental unit, includes any of the following:*
>
> *(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,*
>
> *(i) permits occupation of the rental unit under a tenancy agreement, or*
> *(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*
>
> *(b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*
> *(c) a person, other than a tenant occupying the rental unit, who*

(i) is entitled to possession of the rental unit, and
(ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

(d) a former landlord, when the context requires this

I find that the landlord did request that E.S.C. act as their agent to exercise powers and perform duties under the agreement, by issuing the letter that was delivered by the landlord to the tenant. It would have been reasonable to have given the tenant advance notice of their decision to assign an agent for the purpose of collecting hydro fees; however, I find that the tenant now understands the landlord has in fact engaged E.S.C. to carry out this duty on the landlord's behalf. I find that it was not the delivery of the letter that has posed a problem, but the content of that letter.

I have considered the effect of the letter that was given to the tenant on October 31, 2012 and whether it meets the standard contained in the approved form, RTB - #24.

The approved form requires the following information be provided:

- the tenant's full name and complete rental unit address;
- the landlord's full name;
- the date that Notice is being given;
- a description of the service or facility;
- an explanation of the termination or restriction;
- the amount of rent reduction that will be provided as a result of the termination or restriction;
- the effective date the rent restriction will come into effect;
- the new amount of rent that will be owed; and
- the landlord's signature and a date.

The Notice also contains information for a tenant, explaining the type of services that may be terminated or restricted and how a tenant may dispute a Notice.

I have compared the information provided on the undated letter given to the tenant on October 31, 2012, to the RTB approved form and, despite section 10 of the Act, find that the letter is lacking some critical information that affects the substance of the letter in relation to that required on the approved form. I do not accept that there was an attempt to mislead the tenant and I do not believe that is what the tenant has suggested. However, I find that the letter failed to provide the tenant with the detail that would be expected to be contained in Notice given in the form approved by the RTB.

The tenant did understand that the letter was directed to her; however, she was confused by the fact that she had not been informed that E.S.C. was to act as an agent of the landlord. The letter did not provide a contact name for the landlord, nor was the letter signed or dated. The letter did not provide an explanation for what I take was likely meant to be a restriction of hydro service. Outside of a very brief statement as

explanation, I find that the letter was devoid of any information detailing how E.S.C. had arrived at the rent reduction that was to be provided in recognition of the equivalent value the apparent restriction would impose. The letter did not provide any information on the types of services that may be restricted or information on a tenant's right to dispute the Notice.

Therefore, I find that the tenant's application has merit. I find that the letter given to the tenant on October 31, 2012 did not sufficiently meet the requirements of Notice, in accordance with section 27(2) of the Act, which provides:

> *2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord*
>
> > *(a) gives 30 days' written notice, in the approved form, of the termination or restriction*

The landlord is at liberty to issue a Notice, in the approved form. Until a Notice is issued in the approved form I find that rent will continue to be owed in the sum of $625.00 per month and that rent will include hydro service. Rent will remain at this rate until it is changed in accordance with the Act.

The tenant has been given a Notice of Rent Increase that is not yet effective.

I find that, to date, the tenant is not responsible for any hydro costs imposed since October 2012.

I have not made any finding in relation to the legitimacy of any change that may be made to the provision of hydro services. If the landlord issues a Notice in the approved form the tenant will be free to take steps that she feels are appropriate at that time.

There was no evidence before me that the Notice of Rent increase was anything other than the annual increase that a landlord is entitled to issue.

As the application has merit I find that the tenant may deduct the $50.00 filing fee from the next month's rent due.

There is no need for any further Order.

Conclusion

The letter issued to the tenant in October 2012 was not in the approved form; no change to the provision of hydro services has been made.

Rent will continue in the sum of $625.00 per month, including hydro until, and if, that service is altered in accordance with the Act.

The tenant is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 08, 2013

Residential Tenancy Branch