Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON CENTRE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC OLC RR FF

Preliminary Issues

The Landlord's Agent, a named respondent to this dispute, submitted a letter which states she was not able to take part in the scheduled hearing and that she informed the Tenant. She further states in this letter that the Tenant indicated to her that he was going to cancel this hearing.

The Tenant affirmed that each named respondent was served copies of the application for dispute resolution and notice of hearing documents by registered mail on February 23, 2013. Canada Post tracking receipts were provided in the Tenant's evidence.

The Tenant testified that he did not tell the Agent he would cancel the hearing and stated that this Landlord always has an excuse to delay dealing with their issues either claiming to be busy or always going away on holidays. He said he told the Landlord he would think about her request to cancel. He submitted that he wished to proceed with today's hearing as scheduled.

Upon review of the Tenant's request to proceed with the hearing as scheduled I find that the corporate Landlord and the Agent were both served notice of this proceeding in accordance with the Act and there is insufficient evidence to prove they could not have been represented by an Agent. Furthermore, there is no evidence to indicate the Tenant agreed to cancel this proceeding. Accordingly, there is insufficient evidence to warrant delaying these matters and I continued in the absence of an Agent for either respondent.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 22, 2013, by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to Order the Landlord to comply with the Act, regulation, or tenancy agreement; to allow the Tenant reduced rent for repairs, services, or facilities agreed upon but not provided; and to recover the cost of the filing fee from the Landlord for this application.

Issue(s) to be Decided

1. Should the Tenant be granted a Monetary Order?
2. Should the Tenant's rent be reduced for services agreed upon but not provided?
3. Has the Tenant suffered a loss of quiet enjoyment?
4. Should the Landlord be ordered to put the utilities in their name?

Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: natural gas and hydro utility bills, file numbers of previous decisions, and Canada Post tracking receipts.

The Tenant read his tenancy agreement into evidence and confirmed that the named Landlord is the corporation named as a respondent to this dispute. He confirmed that both the Corporate Landlord and the named Agent were served notice of this proceeding. He affirmed that he entered into a fixed term tenancy agreement that began on August 1, 2008 and switched to a month to month tenancy after one year. Rent was initially payable on the last day of each month in the amount of $1,300.00 but has since increased to $1.356.00 per month. The Tenant paid $650.00 on or before August 1, 2008 as the security deposit.

The Tenant and Occupant stated that they have been at dispute resolution in June and July 2012 and that the Landlord is not complying with the decisions issued on file # 793975 & 790854.They submitted that the Landlord has not complied with previous orders to ensure they are paid for the lower tenant's portion of utilities each month, have an electrician fix the thermostat, and deal with the basement tenants parking in their spot. They argued that the only money they have received for utilities was what was ordered in the June 18, 2012 decision.

The Tenant submitted utility bills for the following amounts and indicated that neither the Landlord nor the basement tenants have provided any payment towards these bills

Natural Gas:

Jul 30/12 to Aug 29/12	$ 77.02
Aug 30/12 to Sep 28/12	$ 46.09
Sep 29/12 to Oct 30/12	$142.62
Oct 31/12 to Nov 29/12	$ 61.86
Nov 30/12 to Jan 02/13	$157.13
Jan 30/13 to March 1/13	$168.35
GAS TOTAL	**$653.07**

Hydro

Aug 01/12 to Aug 29/12	$ 92.86
Aug 30/12 to Oct 01/12	$153.44
Oct 02/12 to Oct 30/12	$158.84
Oct 31/12 to Nov 30/12	$ 22.18
Dec 01/12 to Dec 31/12	$150.67
Feb 01/13 to Mar 01/13	$261.28
Hydro TOTAL	**$839.27**

The Tenant and Occupant stated that there have been two tenants occupying the basement rental unit for over four months now and they should now be paying at least 40% of the utilities as previously ordered. They noted that the only way they get payment is when they have come to dispute resolution. They would prefer not to have to deal with the collecting the money and would like the Landlord to be responsible for utilities.

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The Tenant and Occupant argued that they still do not have a working thermostat and that the downstairs tenants turn off their hot water and heat when they get mad at them. They advised that the new tenant downstairs has been parking in their parking spot and when they ask him to move or report it to the Landlord they get mad and punish them by either turning off the hot water when they are in the shower or by turning their heat way up or way down.

The Tenant is seeking reduced rent for the loss of use of his parking stall for the last four months. They are of the opinion that this is valued at $100.00 as they cannot park on the street without having a permit from the city. They noted that the rental unit is located in a restricted parking area and that residents can park on the street during restricted times with a permit. The Tenant and Occupant are seeking to have the Landlord comply with the terms of their tenancy and the agreements made in the previous hearings.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and

4. The party making the application did whatever was reasonable to minimize the damage or loss.

These parties have attended dispute resolution on two prior occasions to deal with issues relating to non payment of utilities. Those hearings took place on May 31, 2012, and July 19, 2012, for which decisions were issued on June 18, 2012, and July 19, 2012 respectively.

Regarding issues pertaining to the payment of utilities the first Arbitrator awarded the Tenant $567.42 for unpaid utilities and found in her June 17, 2012 decision as follows:

> *If there were two tenants downstairs a 60-40 split would be reasonable*
>
> *I find that the landlords are responsible for the downstairs tenant's unpaid portion of the utilities*

The second Arbitrator also dealt with issues pertaining to unpaid utilities in her July 19, 2012 decision where she awarded the Tenant $132.90 for natural gas and hydro up to May 31, 2012.

The *Residential Tenancy Policy Guideline # 1* stipulates that a term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.

For the purposes of section 6(3)(b) of the Act *[unenforceable term]*, the *Residential Tenancy Regulation defines* a term of a tenancy agreement to be "unconscionable" if the term is oppressive or grossly unfair to one party.

I accept the undisputed evidence that the Tenant has not been paid for utilities used by the downstairs tenant(s) since the July 19, 2012 decision. I further accept the Tenant's submission that the Landlord has not resolved the issue in a manner that ensures prompt payment which makes the current situation oppressive or grossly unfair to the upstairs Tenant.

Based on the foregoing, I find that the Landlord's requirement to have natural gas and hydro placed in this Tenant's name to be unconscionable and therefore unenforceable pursuant to section 6(3)(b) of the *Act.* Accordingly, I hereby order that effective April 1, 2013, that the natural gas and hydro utilities be placed in the Landlord's name. I further order that the Landlord provide the Tenant a copy of each utility bill with a 30 day written demand for 60% of the cost of utilities as there are currently two occupants residing in the downstairs suite who are required to pay the remaining 40%.

I find the Tenant has met the burden of proof to establish their claim for unpaid utilities. As the Tenant has already paid the full amount I award them **$596.93** (40% of $653.07 natural gas+ 40% of $839.27 hydro).

I accept the findings made in the July 19, 2012 decision that the Tenant is entitled to use and access of half of the garage and the undisputed testimony that he is entitled to the sole use of half of the driveway for his parking. I also accept the undisputed evidence that the second occupant who has resided in the downstairs suite for the last four months has taken over their side of the driveway, refusing to park elsewhere, and that the Landlord has failed to deal with this situation appropriately.

Based on the above, I find the Tenant has proven entitlement to reduced rent for services or facilities agreed upon and not provided for the period of November 2012 to February 2013 in the amount of **$400.00** (4 x $100.00). I further Order the Landlord to deal with the downstairs tenants in a manner that ensures the Tenant has full, unobstructed, unlimited access to their side of the driveway, no later than March 31, 2013.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

I find it undeniable that the upstairs Tenant and occupants have suffered, and will continue to suffer, a loss of quiet enjoyment, as a result of the downstairs occupants' acts of retaliation which have included the downstairs occupants disconnecting the heating thermostat controls and turning off the hot water tank. I accept the undisputed evidence that the Landlord has not dealt with these situations appropriately.

The issues surrounding the thermostat were heard in previous hearings yet remain unresolved. Since the previous hearings the Tenants have had to deal with situations relating to unpaid utilities, parking, and what they referred to as "punishment" from the downstairs occupants such as the hot water tank being shut off while they are in the shower. These issues have been reported to the Landlord and the Landlord has failed to deal with them appropriately. As a result, I find the Tenant is entitled to compensation for this continual loss of quiet enjoyment.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation and the length of time over which the situation has existed".

In this case the evidence supports the Tenant has suffered a loss of quiet enjoyment since the Tenant filed his first application for dispute resolution in April 2012.

Accordingly, I award the Tenant compensation for loss of quiet enjoyment in the amount of **$825.00** (11 months x $75.00).

I Order the Landlord to have the property inspected by a licensed electrician and they return access and control of the heating thermostat to the upstairs Tenant and occupants no later than April 15, 2013.

I further Order the Landlord have the hot water tank inspected by a licensed plumber to ensure it is working properly and who makes the shut off valve inaccessible to the downstairs occupants no later than April 15, 2013

The Tenant has been successful with their application; therefore, I award recovery of the **$50.00** filing fee.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **$1,871.93** ($596.93 + $400.00 + $825.00 + $50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

After consideration that these matters have now been before dispute resolution three times in less than one year, I HEREBY ORDER that effective **April 1, 2013**, the upstairs Tenant and occupants are to stop paying rent until such time as the Landlord has done the following:

1) The Landlord has made application for dispute resolution to have rent payments re-instated; and
2) The Landlord has attended dispute resolution and proven:
   a) The natural gas and hydro utility accounts have been put into the Landlord's name; and
   b) The property has been inspected by a licensed electrician who returns access and control of the heating thermostat to the upstairs Tenant and occupants; and
   c) The hot water tank is inspected by a licensed plumber who reports that the tank is working fine and the shut off valve has been made inaccessible to the downstairs tenant and occupant(s); and
   d) The Landlord has ensured the Tenant has full unobstructed access to their parking spot and their side of the driveway; and
3) The Landlord has proven **all** of the above and has been issued an Order to reinstate the Tenant's monthly rent.

For clarity, effective April 1, 2013, the Tenant will pay $0.00 (NIL) as rent until the Landlord is granted an Order to re-establish monthly rent payments back to $1,356.00 per month.

I caution the Landlord that under section 95(2) of the Act, any person who coerces, threatens, intimidates or harasses a tenant from making an application under the Act, or for seeking or obtaining a remedy under the Act, may be found to have committed an offence and is subject to a fine or administrative penalty.

This decision is legally binding 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 20, 2013

Residential Tenancy Branch