Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF, O

Introduction
This hearing was set to deal with the tenant's application for an order setting aside a 2 Month Notice to End Tenancy for Landlord's Use and a monetary order. Both parties appeared and had an opportunity to be heard.

The tenant advised that he and his wife had decided to comply with the notice to end tenancy and he was withdrawing his application for an order setting aside the 2 Month Notice to End Tenancy for Landlord's Use. He undertook to be out of the rental unit by May 1, 2014. The landlord advised that she did not think an order of possession was necessary at this time.

The landlord had cashed the tenant's April rent cheque. The landlord undertook to repay the April rent of $1900.00 to the tenant and return the balance of this year's post-dated cheques on Monday, April 20, 2015. The tenant advised that he did not think a monetary order for the April rent was necessary at this time.

The hearing proceeded on the tenant's application for a monetary order only.

Issue(s) to be Decided
Is the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence
This tenancy commenced September 15, 2010. The previous tenant was an acquaintance of the current tenants. When she gave her notice to end tenancy to the landlord she recommended the tenants to her. The communication between the landlord and the tenants was by e-mail only; in fact, the landlord did not meet the tenants until some months after the start of their tenancy. A written tenancy agreement was never signed; nor was a move-in inspection conducted or a move-in condition inspection report completed.

The tenants paid the same rent as their friend had - $1900.00 a month, due on the first day of the month. The BC Hydro account had been in their friend's name so that account was simply transferred to the new tenants.

The rental unit is a house which the landlord estimates to be about 1150 square feet. Also on the same lot is a small cottage, about 350 square feet, which is rented to another tenant on a separate tenancy agreement. Originally, the landlord had lived in the house and a garden shed was fixed up to provide separate living quarters for her university age daughter. (In the hearing and in this decision this structure is referred to as the cottage.)

The house has a gas fireplace, furnace, water heater and stove, and an electric refrigerator, apartment sized freezer, dishwasher, washer and dryer. The cottage does not have gas service. It has electric heat, refrigerator, stove, washer and dryer.

Early in 2013 the tenants discovered that both units were on the same meter and they were paying the hydro for both rental units. They raised the issue with the landlord. The landlord said she apologized to the tenants for not making the nature of the arrangement clear at the beginning of the tenancy. She also undertook to talk to the other two co-owners of the property – her daughter and another person.

The owners decided that they had accommodated the tenants by not objecting to their pets even though this was a "no pets" rental and that they would compensate the tenants by not raising the rent but they would not provide any other compensation to the tenants for the hydro used by the other tenant. The tenant says they were advised of this some time after the issue was raised. There is no evidence that the tenants actually agreed to this proposal.

A new tenant moved into the cottage sometime at the end of 2013 or the beginning of 2014. Neither party was able to provide a precise date. The issue of the hydro bill was raised and the landlord suggested to the new tenant that the she try to work things out with the tenants but that she was not going to get involved. The tenants did come to an agreement with the new tenant and she has been paying half the hydro bill since the start of her tenancy. According to the tenant, this arrangement was been without any problems.

The tenant claims half of the hydro bills paid from the start of the tenancy up to and including the bill dated February 20, 2014, a total of $1629.48.

The landlord argues that:

- A reasonable settlement was reached two years ago.
- The benefit of no rent increase over the past two years outweighs the cost of the hydro.
- A 50/50 split is unreasonable given the relative size of the two units and the fact that two people live in the house and only one person lives in the cottage.
- They accommodated the tenants' cat and dog.

The tenant argues that:

- Most of the appliances in the house are gas.
- The previous tenant of the cottage had a boyfriend who either lived with her or spent most of his time with her.
- They are away two or three days of every week.
- The tenant of the cottage has a large dog.
- Based upon the usage recorded on the BC Hydro website, the actual split between the house and cottage is more like 40/60.

Analysis

Section 6(3) of the *Residential Tenancy Act* provides that if a term of a tenancy agreement is unconscionable it is not enforceable. Section 3 of the *Residential Tenancy Regulation* provides that for the purposes of section 6(3)(b) of the Act, a term of a tenancy agreement is "unconscionable" is the term is oppressive or grossly unfair to one party.

Residential Tenancy Policy Guideline 1:Landlrod & Tenant – Responsibility for Residential Premises states that in general, a term in a tenancy agreement which provides a tenant to put electricity, gas or other utility in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the *Regulation*.

A term of a tenancy agreement, written or unwritten, that one tenant pay for the hydro used by another tenant in a separate rental unit, is totally unreasonable. To not advise the tenant footing the bill that this was part of their contract – either as a term of a written tenancy agreement, as part of the e-mail exchange that formed the tenancy agreement, or in any other communication between the parties – is reprehensible.

I have no difficulty finding that this term of the tenancy agreement is unconscionable and therefore unenforceable.

The landlords argue that even if they should not have required the tenants to pay their neighbour's hydro bill they have adequately compensated the tenants in two ways: they accepted the tenants' pets and they did not raise the rent for the last two years of the tenancy.

The first point that must be made is that neither of these forms of compensation required the outlay of any cash by the landlords.

Secondly, there is no written tenancy agreement that specifies that pets are not permitted nor was any other evidence filed to support the landlords' assertion that one of the terms of this tenancy agreement was that pets were not permitted.

Thirdly, there is no evidence that the tenants agreed to the rent remaining the same as compensation for the overpayment of the hydro. The tenants may have preferred to have the use of their money in 2010, 2011, 2012, and 2013 and then in 2013, 2014 and 2015 to have the opportunity to decide whether this rental unit was worth a higher rent.

Finally, when the landlords said they would not raise the rent as compensation for the overpayment of the hydro they did not know how long the tenants were going to stay in the rental unit. It was only a benefit to the tenants if they stayed long enough to reach the breakeven point that this settlement was of value to them; for if they moved out any time before the breakeven point, they would lost some money. If in 2013 the landlords thought the rent reduction was more valuable than simply repaying the overpayment to the tenants why didn't they do so? The answer appears to be because they thought this was the cheaper option. Once again, this was a one-sided arrangement imposed by the landlords on the tenants. I find that this proposed settlement, which is really a unilateral amendment to the tenancy agreement, is also unconscionable.

I find that the landlords are responsible for the portion of the hydro bill that is attributable to the cottage from September 15, 2010 to February, 2014.

Where there is only one meter the division of a hydro bill between two rental units is always an estimate. In this case I give particular weight to the fact that the current tenant of the cottage has had an opportunity to examine the information the tenants had collected and has paid 50% of the hydro account without complaint since the start of her tenancy. Accordingly, I find that a 50/50 split of the hydro bill is reasonable.

I find that the tenants have established a total claim of $1679.48 comprised of overpayment of the hydro account in the amount of $1629.48 and the $50.00 fee they

paid to file this application and pursuant to section 67 I award them a monetary order in that amount.

Conclusion

A monetary order in the amount of $1679.48 has been granted to the tenants. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

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: May 6, 2015

Residential Tenancy Branch