Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This is an Application for Dispute Resolution (the "Application") brought by the Tenant requesting a cancellation of the Notice to End Tenancy for Unpaid Rent or Utilities. The Tenant also requests an order for payment of the filing fee.

The Landlord appeared for the scheduled hearing; the Tenant also appeared, along with his advocate (hereinafter referred to as "Tenant"). I find that the notice of hearing was properly served and that evidence was submitted by all parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Much of the evidence was filed late by the Tenant, as it was submitted 5 to 10 days prior to the hearing date; as this was not in compliance with rule 3.14 of the Rules of Procedure, I find that it would be prejudicial to consider this evidence as it was filed too late for the Landlord to review and reply at least 7 days prior to the hearing date, as per rule 3.15.

The testimony and argument of the Tenant and his representative were considered, as well as all of the evidence filed by the Landlord 21 days prior to the hearing date. It was noted that although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Tenant entitled to a cancellation of the 10-Day Notice to End Tenancy, pursuant to section 46 of the Residential Tenancy Act ("Act")?

Is the Tenant entitled to payment of the filing fee of $100.00 pursuant to section 72 of the Act?

If the Tenant is unsuccessful in cancelling the 10 Day Notice to End Tenancy, is the landlord entitled to an Order of Possession, pursuant to section 55 of the Act?

Background and Evidence

The tenancy began on February 1, 2015 and involved this Tenant, JA, and two other co-tenants listed under the same tenancy agreement; copies of the agreement were submitted into evidence, the Landlord acknowledging that his version contained some additional writing and notes that were not intended to be "legal", but were intended for his reference only.

Therent was set at $1,650.00 per month and indicates that it includes water. It stated that the Tenants were responsible for garbage removal, snow removal, lawn care and their own insurance. Gas and electricity were placed into the name of one of the tenants, as per the agreement at the start of the tenancy. All three tenants signed the agreement, along with the Landlord. There is a separate tenancy for the basement suite in the same home.

About a year into the tenancy, the Landlord states that he told the tenants that they would have to be responsible for paying water expenses due to increased consumption, and that it would go into one of their own names and be shared equally between the upstairs' suite and downstairs' suite. The Tenant denies agreeing to any of this.

The February 22nd, 2016 email from the Landlord states that "*The future bills are the tenants' responsibility*", referring only to the water charges, but he was unable to verify that there was any verbal or written agreement with the tenants prior to sending that email to the tenants. A copy of the email string was submitted into evidence by the Landlord.

The Landlord claims that the one former co-tenant, NP, agreed to put the water bill into his own name via email response on February 24, 2016 (purported to be from an email account connected with this co-tenant): "*Hey robin I will put the water bill in my name*." The Landlord explained that tenant moved out of the premises the fall of 2017, never having made any payments for water. There was no documentary evidence submitted to prove whether the water bill was ever transferred into the name of the co-tenant, or any other tenant.

The Landlord confirmed that the water bill is currently in the name of the Landlord and the Landlord has made all payments to the city, including interest charges. There was no mention of any garbage collection charges during these 2016 discussions about additional utility expenses.

The Landlord states that the local municipal authority separates charges for garbage pickup and water usage on each bill sent to him. He claims that since the tenancy agreement states the Tenant is liable for "garbage removal", that he is liable for the city charges assessed for garbage collection against the owner of the property. The Tenant denies agreeing to pay such charges to the Landlord. It appears that these additional charges were only first raised as an issue by the Landlord in April of 2018, about three years into the tenancy.

There were ongoing conversations between the parties, both verbally and in emails, regarding issues with plumbing and noise; the plumbing required significant work and the Tenant suggests that the water charges went back down to "normal levels" after the Landlord did some of the required plumbing repairs under the basement suite to replace rotted pipes, based on a historic review of bills provided by the Landlord.

The Tenant states that it was not until April of 2018 when the upstairs and downstairs tenants were directly advised that they would be required to pay the water and garbage charges dating back two years. The Landlord's demand letter states, in part: "*Since the costs for which we require reimbursement now go back over two years and you ought to have been paying them all along, we require prompt payment. If you intend to continue as tenants, we also require the water billing to be put into the name of one of you*."

The Landlord states that both sets of tenants received copies of the bills along with the demand to pay $1,370.13, representing half the historic "utility" costs. The Tenant denies any liability and claims there was no agreement to pay these additional charges. The Landlord's letter claims that the Residential Tenancy Board ("RTB") confirmed with him that he had the legal right to demand payment, but the Tenant argues that there

was never an application by the Landlord for the increase, nor any written agreement consenting to the change.

The Tenant states that he invited the Landlord to take his claim to add in these utility charges to the RTB, but that the Landlord instead waited the 30 days for payment and then served a 10-Day Notice to End Tenancy for Unpaid Utilities on both sets of tenants. The notice served on this Tenant was dated May 18th with an effective date of May 31, 2018; it was served by registered mail and Canada Post notes it was delivered May 22nd. The Tenant filed a dispute application on May 25, within the five-day limitation period.

The Tenant argues that the addition of the water and garbage collection charges amounts to an increase in the rental amount and this required written and signed consent of the Tenant or an Order of the Residential Tenancy Branch. He states that the Landlord had made annual increases to the monthly rent and that those increases have been paid, as they complied with the law; however, he argues that these additional utility charges of $1,370.13 amount to a retroactive rent increase which the Tenant is not legally liable to pay as he did not agree to the change.

The Landlord argues that the former co-tenant bound this Tenant legally by agreeing to the additional water charges in 2016 and that all tenants are jointly and severally liable for those costs; he also argues that the garbage collection charges from the city are a term of the tenancy agreement from 2015, and that he is entitled to claim payment retro-actively.

As a preliminary matter, the Tenant's representative asked whether the Landlord had filed any application with the RTB or had requested a decision with respect to a rent increase. The Landlord's letter of April 2018 to the Tenant repeatedly states that "the board" requires the tenants to pay the costs, perhaps suggesting that there had been a decision of the RTB, and that it was within the Landlord's legal rights to demand payment from these tenants. I confirmed that the Landlord has not filed an application for dispute resolution with the RTB, and these issues are now before me to address.

Analysis

The Landlord has argued that the additional water charge was agreed to by former co-tenant NP and that this binds all co-tenants under their agreement. Under Policy Guideline 13, the RTB outlines the rights and responsibilities relating to multiple tenants renting premises under one tenancy. Co-tenants are jointly and severally liable for any debts relating to the tenancy and a landlord can recover the full amount of rent or utilities from all or any one of the tenants. I note that the original 2015 tenancy agreement states that it shall run "year to year" and continues until the landlord or tenant gives proper notice to terminate.

If this is to be considered a "fixed term tenancy", and a tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If it is considered a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt relating to the tenancy until the tenancy agreement is legally ended. If the tenant who moves out gives proper notice to end the tenancy, the tenancy agreement will end on the effective date of the notice, even if the notice is not signed by all tenants.

There was no evidence led as to whether the co-tenant, NP, actually gave written and signed notice to move out or whether he was evicted and left. In any event, the Policy Guideline states, "*if any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement*."

Based on the limited evidence before me, I find that the remaining co-tenants continued to lease the space under the original terms of the tenancy agreement, subject to the rental increases which occurred annually. I now turn my attention to the agreed terms of that tenancy and how this impacts the parties today.

It is clear from the original 2015 tenancy agreement that the Tenant and the two co-tenants were not required to pay for water as it was included in the monthly rental fee, which was increased annually by the Landlord. In addition, the agreement only claims that the Tenant was responsible for garbage removal, not for paying the Landlord for charges imposed by the city for garbage collection services. The Tenant has argued that the Landlord has attempted to impose new charges in 2016 and that this amounts to an amendment to the agreement.

Section 14 of the Act sets out how a tenancy agreement may be amended during the course of a tenancy:

Changes to tenancy agreement

> ***14*** *(1) A tenancy agreement may not be amended to change or remove a standard term.*
> *(2)* ***A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment****.*
> *(3) The requirement for agreement under subsection (2) does not apply to any of the following:*
>
> > *(a) a rent increase in accordance with Part 3 of this Act;*
> > *(b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 [terminating or restricting services or facilities];*
> > *(c) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required. (bolding added)*

With respect to the issue of rent increases, sections 41 through 43 provide that rent increases can only occur once every 12 months, following a prescribed calculation. If a rent increase is to exceed that amount, then it requires an agreement in writing with the tenant or an order of the director upon application to the RTB.

It is clear from the evidence that the Landlord made annual increases to the monthly rent amount in accordance with the legislation, but I find that the demand to cover the garbage collection and water charges back to 2016 amounts to an increase in rent that would exceed that which is authorized.

In such circumstances, the Landlord has the option of obtaining a written agreement with the Tenant to approve of the changes to the tenancy agreement or to file an application to obtain consent of the RTB to increase the payments. There was no application by the Landlord to the RTB to obtain permission to increase the charges, and the Tenant denies ever agreeing to the additional charges.

The Landlord bears burden of proving that one of the co-tenants agreed to pay the increased amount to cover the water costs, making this Tenant jointly and severally

liable. The Landlord submits that the email from the former tenant, NP, qualifies as an agreement to put the water bills into his own name and that the co-tenants are jointly and severally liable for water expenses back to 2016; he further argues that the tenancy agreement made the tenants liable for garbage removal, which he now claims includes the city charges for garbage pickup back to that same time period.

I find that the argument that the garbage collection charges are now the responsibility of the Tenant lacks credibility as the Landlord made no such claim or request for payment in the first three years of the tenancy.

In a March 30, 2018 email to the Tenant, the Landlord states that garbage cannot be left strewn about the yard, that it must be placed in bags and put in containers supplied by the city. This implies that the Tenant is responsible for "garbage removal", but not for city-imposed assessments against homeowners for garbage collection, as this is not mentioned in that email or at any point in the three years prior.

I find that the Landlord is estopped from imposing garbage collection charges against the Tenant going back to the start of the tenancy three years ago, as the agreement and subsequent email suggests that this was not the intention of either party at the time of signing the agreement, and the Landlord made no mention of this expense until years later when he was preparing to evict the Tenant.

Estoppel is a legal rule that prevents somebody from stating a position inconsistent with one previously stated, especially when the earlier representation has been relied upon by others.

With respect to the water bills, if the Landlord is successful in proving that there was an agreement in 2016 to have the tenants pay him this expense, then failure to pay can result in a Notice to End Tenancy under section 46 of the Act:

> ***46 (6)*** *If*
>
> *(a)* ***a tenancy agreement requires the tenant to pay utility charges to the landlord****, and*
>
> *(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,*
>
> *the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.* (bolding added)

The Landlord argues that the Tenant has failed to comply with his April demand for payment within 30 days and that he was entitled to give notice to end the tenancy under section 46. I find that the notice meets the requirements of section 52 in form and in content and was served properly, however the Landlord bears the burden of proving that there was an agreement to pay him the water charges, commencing in 2016.

I have reviewed the tenancy agreement, email conversations and considered the testimony and argument of both parties. I find that the Landlord has failed to provide sufficient evidence that the previous co-tenant agreed in writing to pay the Landlord for water expenses.

Furthermore, the direct evidence of this Tenant was that he repeatedly stated he would not pay for water. There was no direct evidence to confirm the previous tenant actually sent the response in the 2016 email, or any other verbal agreement between the Landlord and this former co-tenant; perhaps more importantly, there was no evidence that NP agreed to pay water charges directly to the Landlord.

In fact, no such payments were ever received by the Landlord, nor by the city in the year that followed; this suggests that there was no such agreement in place with NP.

I find that the Landlord unilaterally imposed a new requirement in 2016 that "*future bills are the tenants' responsibility*" and required one of the tenants to put the bill in their name, not that he be paid directly for utility charges as required under section 46(6).

There is insufficient evidence to suggest that there has ever been any agreement to pay any utility charges to the Landlord, which is a requirement to evict under section 46(6). Accordingly, I find that the Landlord has failed to satisfy me that the 10-Day Notice to End Tenancy for Unpaid Utilities contains a valid and binding reason to terminate this tenancy.

As the Tenant has been successful in his Application, I am awarding the $100.00 filing fee to him.

Conclusion

The 10-Day Notice to End Tenancy dated May 18, 2018 for Unpaid Utilities is hereby cancelled and of no force and effect. The tenancy shall continue until terminated by either party with proper notice.

The Tenant is entitled to the $100.00 filing fee, which may be deducted from a future rent payment to the Landlord.

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 12, 2018

Residential Tenancy Branch