Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CIAME INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 15, 2019 (the "Application"). The Tenant applied for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement. The Tenant sought reimbursement for the filing fee.

The Tenant appeared at the hearing. K.M. and M.T. appeared for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties and the documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?

2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought an order that the original tenancy agreement, which included electricity, be upheld.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started October 01, 2006 and is a month-to-month tenancy. Rent was originally $680.00 per month due on the first day of each month. The agreement states that rent includes water, electricity and heat.

The Tenant submitted a letter from the Landlord dated May 15, 2019 stating that the Landlord is terminating the BC Hydro account September 30, 2019 and that the Tenant should set up their own account starting July 01, 2019. The letter includes a Notice of Rent Increase increasing the rent to $885.00 starting October 01, 2019. The letter also includes a Notice Terminating or Restricting a Service or Facility stating that BC Hydro (electrical, heat, hot water) will be terminated as of October 01, 2019 and rent will be reduced by $65.00 per month effective October 01, 2019.

The Tenant testified as follows. The original tenancy agreement included electricity. Electricity is an essential service. It cannot be terminated. It is an expense that was included in the original tenancy agreement. He does not believe the amount of the rent reduction is equivalent to the cost of electricity. Therefore, he will incur further expenses. He could not obtain an average cost from BC Hydro because he does not own the rental unit.

The Tenant acknowledged being served with the Notice of Rent Increase and Notice Terminating or Restricting a Service or Facility. The Tenant did not know when he received these. The Tenant did not raise an issue with the form or content of these.

K.M. testified as follows. She understands electricity is essential. The Landlord is not taking it away because the Tenant can obtain their own account. It is simply a change in the account holder name. The rent reduction is based on what BC Hydro provides as an estimated cost for a one-bedroom apartment. If tenants are concerned about the amount the Landlord is willing to discuss it with them. The Notice Terminating or Restricting a Service or Facility was served May 15, 2019.

Analysis

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove the claim.

Section 1 of the *Residential Tenancy Act* (the "*Act*") defines a "service or facility" as:

> …any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit…
>
> (b) utilities and related services…

Section 27 of the *Act* outlines when a Landlord can restrict or terminate a service or facility and states:

> 27 (1) A landlord must not terminate or restrict a service or facility if
>
> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
>
> (b) providing the service or facility is a material term of the tenancy agreement.
>
> (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, and
>
> (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Policy Guideline 22 addresses termination or restriction of a service or facility that is provided by a landlord under a tenancy agreement and states in part:

> **An "essential" service or facility** is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation or use of the manufactured home site as a site for a manufactured home, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable

person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Even if a service or facility is not essential to the tenant's use of the rental unit as living accommodation, provision of that service or facility may be a material term of the tenancy agreement. When considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement. It is entirely possible that the same term may be material in one agreement and not material in another.

In determining whether a service or facility is essential, or whether provision of that service or facility is a material term of a tenancy agreement, an arbitrator will also consider whether the tenant can obtain a reasonable substitute for that service or facility. For example, if the landlord has been providing basic cablevision as part of a tenancy agreement, it may not be considered essential, and the landlord may not have breached a material term of the agreement, if the tenant can obtain a comparable service.

…

Where the tenant claims that the landlord has restricted or terminated a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant.

There are six issues which must be addressed by the landlord and tenant.

- whether it is a service or facility as set out in Section 1 of the Legislation;
- whether the service or facility has been terminated or restricted;
- whether the provision of the service or facility is a material term of the tenancy agreement;
- whether the service or facility is essential to the use of the rental unit as living accommodation or the use of the manufactured home site as a site for a manufactured home;
- whether the landlord gave notice in the approved form; and
- whether the rent reduction reflects the reduction in the value of the tenancy.

I find that electrical, heat and hot water are services as that term is defined in section 1 of the *Act* as they are utilities and related services.

I find the Landlord is terminating the services at issue as they are terminating the BC Hydro account and therefore no longer providing the services at issue to the Tenant as part of the rent amount.

I find electrical, heat and hot water are essential in the sense that they are necessary to the use of a rental unit as living accommodation. These are important services, the loss of which would make it impossible or impractical for the tenant to use the rental unit as living accommodation.

However, I accept that the Tenant can obtain these services by setting up his own account with BC Hydro. The Tenant therefore can obtain a reasonable substitute for the services at issue. In this sense, I find the services at issue more akin to the cablevision example set out in Policy Guideline 22 and not akin to the elevator example.

I am not satisfied the term relating to the services at issue is a material term of the tenancy agreement. The Tenant has the onus to prove the claim and therefore the onus to prove the term is a material term. The Tenant did not provide compelling evidence or testimony on this point.

Given the above, and in particular that the Tenant is able to obtain his own BC Hydro account and therefore obtain the services at issue, I am satisfied the Landlord is allowed to terminate the services at issue as long as the Landlord complies with section 27(2) of the *Act*.

The Tenant acknowledged receiving the Notice Terminating or Restricting a Service or Facility. He did not know when he received this. I accept the testimony of K.M. that it was served May 15, 2019. I did not understand the Tenant to dispute this date. Further, the letter and Notice Terminating or Restricting a Service or Facility are dated May 15, 2019. The termination was to occur October 01, 2019. The Notice Terminating or Restricting a Service or Facility is on the approved form. I find the Landlord complied with section 27(2)(a) of the *Act*.

Further, the Landlord reduced the rent by $65.00. I am not satisfied this amount is insufficient. K.M. testified that it is based on an estimate provided by BC Hydro for a one-bedroom apartment. The Tenant did not provide compelling evidence to support his position that the amount is not sufficient. Again, this is the Tenant's application and

his onus to prove he is entitled to the order sought. I am not satisfied at this point that the Landlord failed to comply with section 27(2)(b) of the *Act*.

In the circumstances, I am satisfied the Landlord was allowed to terminate the BC Hydro account and require the Tenant to obtain an account in his name. Therefore, I am not satisfied the Tenant is entitled to an order that the Landlord comply with the original tenancy agreement which included the services at issue.

However, I do order pursuant to section 62 of the *Act* that the Landlord not terminate the BC Hydro account until December 31, 2019 so that the Tenant has time to put the account in his name.

Given the Tenant was not successful in this application, I decline to award him reimbursement for the $100.00 filing fee.

I dismiss the Application; however, I dismiss it with leave to re-apply on the issue of whether the Landlord complied with section 27(2)(b) of the *Act* and reduced the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination of the services at issue. I do so for two reasons. First, I accept that the Tenant was not able to obtain information from BC Hydro about his usage when the account is not in his name. Second, K.M. stated that the Landlord was willing to discuss the amount with tenants if the cost ends up being higher than the reduction given. In these circumstances, the Tenant is permitted to re-apply once he has further information about the cost of the services at issue.

Conclusion

The Tenant is not entitled to an order that the Landlord comply with the original tenancy agreement which included the services at issue.

However, I do order that the Landlord not terminate the BC Hydro account until December 31, 2019 so that the Tenant has time to put the account in his name.

The Tenant is not entitled to reimbursement for the filing fee.

The Application is dismissed. However, the Tenant can re-apply on the issue of whether the Landlord has complied with section 27(2)(b) of the *Act* once he obtains further information regarding this.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 28, 2019

Residential Tenancy Branch