Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 67 for compensation for loss or other money owed; and
- an order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement.

C.B. and K.B. appeared as the Tenants. J.K. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Additional evidence was provided to the Residential Tenancy Branch by the Tenants in late September 2022. I enquired whether the Tenants had served these documents as only one registered mail receipt was provided by the Tenants as proof of service. The Tenants indicated that they had not been served. As the second evidence package was not served on the Landlord, I find that it would be procedurally unfair to include in and consider it as part of these proceedings. According, the additional evidence shall not be included or considered by me in this application.

Issues to be Decided

1) Are the Tenants entitled to monetary compensation?
2) Should the Landlord be ordered to comply with the *Act*, Regulations, and/or the tenancy agreement?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details:

- The Tenant moved into the rental unit on September 1, 2020.
- Rent is due on the first day of each month.
- A security deposit of $675.00 was paid to the Landlord.

The parties advised that the rental unit is a lower unit within a single detached home, in which the upper portion is also rented out by the Landlord.

The Tenant C.B. testified that she had originally paid $1,350.00 monthly rent when the tenancy began. I was directed to a shelter information form dated August 24, 2020 in the Tenants' evidence, which C.B. submitted was the initial tenancy agreement. I am advised by C.B. that the original arrangement was such that she paid rent, which included utilities. The Landlord confirmed the original arrangement was such that rent, which included utilities, was paid in the amount of $1,350.00.

I am advised by C.B. that the upper unit had been occupied by the Landlord's family members and that utilities had previously been in their name when she moved in. I am further advised that the family members moved out of the upper rental unit sometime in the summer of 2021.

The Landlord provided a copy of a tenancy agreement signed by the parties on September 12, 2021. In that tenancy agreement, rent was changed such that it would be payable in the amount of $1,300.00 every month and, as stated within the tenancy agreement, the "Tenant will put Fortis/Hydro in own name for October 1st". The Tenant acknowledged having signed the new tenancy agreement.

C.B., however, argued that she was unaware of the costs associated with setting up the accounts and says that she is of limited financial means. She further argued that the Landlord had not told her about the costs of setting up an account when she entered the neew tenancy agreement and would not have renegotiated the agreement had she known. Finally, it was argued that the new tenancy agreement amounted to a rent increase that was imposed without giving the three-month notice as required under s. 42 of the *Act*.

The Tenants seek a monetary award for the arrears on the utility accounts, which the invoices provided by the Tenants in their evidence indicate is $855.00 for Fortis and $847.75 for BC Hydro.

I am told that the accounts have been in the Landlord's name as of March 1, 2022. I am further advised that at that time the upper rental unit was rented out to others. The parties confirmed that there was no occupants living upstairs between September 2021 and March 2022. The parties further confirmed that the residential property has one meter for the utility services supplied to both rental units.

The Landlord submitted that the Tenants are now responsible for paying 1/3 of the utilities now that there is an upstairs occupant, though confirmed no new tenancy agreement had been signed. In his written submissions, the Landlord indicates that the utility accounts are now in his name as of March 2022.

I am advised that the Landlord has issued a notice to end tenancy. The Tenants confirmed not having filed an amendment to their application including a claim to cancel the notice to end tenancy.

Analysis

The Tenant seeks an order that the Landlord comply with the *Act* and seeks a monetary award for damages.

Pursuant to a s. 62(3) of the *Act*, the director may make any order necessary to give effect to the rights, obligations, and prohibitions under the *Act*, the Regulations, and the tenancy agreement. This includes making an order that the Landlord comply with the *Act*, Regulation, and the tenancy agreement.

I accept there is a dispute regarding the utilities. It is clear, however, that the parties had two separate tenancies existed between the parties. The first began on September 1, 2020 in which rent, including utilities, was paid in the amount of $1,350.00. The second began on October 1, 2021 in which rent, excluding utilities, was paid in the amount of $1,300.00. The Tenant took on the utilities in consideration for decreased rent. Consideration between the parties was exchanged and a new agreement took shape.

The Tenant argues she had been taken advantage of by the Landlord. It is not clear to me that this took place. The Tenant did not raise arguments that she was coerced or under duress in signing the new tenancy agreement. The Tenants are competent adults with the freedom to contract provided duress or coercion are not present which would undermine their ascent to the new agreement. I have been provided no evidence to suggest that coercion or duress is present as mere financial vulnerability is insufficient by itself to claim that is the case. Further, the Landlord is under no obligation to advise the Tenants of the cost setting up the utility accounts. The Tenants can advise themselves of this by making their own inquiries. To be clear, the Tenants were under no obligation to renegotiate the tenancy agreement in September 2021 and take on the utilities. They did so of their own volition. They could have just as easily told the Landlord they were not interested and continued with the previous tenancy agreement.

The Tenant argued that taking on the utilities constituted a rent increase in contravention of s. 42 of the *Act*. However, there were two separate tenancies, given the renegotiation in September 2021 such that the rent increase restriction under s. 42 is not applicable. Further, rent did not increase as part of the renegotiation. In fact, it decreased by $50.00 per month. I place no weight in the Tenants argument that their taking on the utilities constituted an unauthorized rent increase under the *Act*.

The primary issue, however, is that the updated tenancy agreement is unclear as to its operation as there is only one meter for the services at the residential property. The tenancy agreement is in the standard form and clearly sets out that electricity and natural gas are not included in the rent, thereby confirming the Tenants obligation to pay it on their own. The tenancy agreement states the accounts were to be placed in the Tenants name beginning October 1, 2021. The issue with this is that it conceivably places the burden of paying utilities for the upper occupants on the Tenants since there is only one meter for both rental units.

Both at common law and under s. 6(3)(b) of the *Act*, a term of a contract found to be unconscionable is unenforceable. Policy Guideline #8 provides the following definition of what is considered an unconscionable term:

> A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party.

Though not specifically alleged by the Tenant, I do find that the clause in which utilities be placed in the Tenants name to be unconscionable insofar as it relates to a period in which the upper suite is occupied by others. It is manifestly unfair to the Tenants to expect them to pay the cost of utilities for the upper occupants or to collect utilities from the other occupants as there is no contractual relationship between them. This raises the secondary issue with the updated tenancy agreement, specifically that there is no apportionment between the rental units of the utilities to be paid. The Landlord says that the Tenants are responsible for paying 1/3 of the utility costs, though that is not specified at all within the tenancy agreement provided to me nor was a new tenancy agreement signed when the upper occupants moved into the rental unit.

I resolve these issues by finding that the from September 2021 to March 2022, prior to the upper occupants moving into the rental unit, the Tenants were responsible for paying the utilities in full as they were the sole occupants of at the residential property. Once the new occupants moved into the upper rental unit, the clause that the utilities be put into the Tenants name became unconscionable and, thus, is unenforceable. I make no orders or findings with respect to the apportionment after the occupants moved into the upper rental unit as I have been provided insufficient information to make any findings on this point.

All this is to say that I find that the Landlord has not specifically breached any section of the *Act*, Regulations, or the tenancy agreement. The updated tenancy agreement clearly sets an obligation that the Tenants pay utilities, which was not unfair when the Tenants were the sole occupants at the residential property. Though the term, in operation, became unenforceable with the new occupants, I do not find that any order be made to correct the issue as the term is unenforceable based on my previous finding that it is unconscionable under those circumstances.

With respect to the Tenants' monetary claims, under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure

to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The Tenants monetary claim must fail as there has been no specific breach of the *Act* that is causally connected to the loss alleged by the Tenants. The utility invoices provided, in addition to the confirmation provided by the Landlord that he took on the accounts in March 2022, clearly demonstrate that the accounts are not in relation to a period in which the upper rental unit was occupied. In other words, the cost of paying them falls squarely on the Tenants. Their claim for monetary compensation is dismissed without leave to reapply.

I make no orders or findings on any notice to end tenancy as the claim was not put before me. Rule 2.2 of the Rules of Procedure limits a claim to what is stated in the application. As confirmed by the Tenants, no amendment was filed.

Conclusion

I make no orders under s. 62(3) of the *Act* as the Landlord has not been found to have breached the *Act*, Regulations, and/or the tenancy agreement. I find that the new tenancy agreement, specifically the utilities section, was enforceable to the extent that the upper rental unit was unoccupied.

The Tenants claim for monetary compensation under s. 67 of the *Act* is dismissed without leave to reapply. The utilities claimed by the Tenants were their responsibility as they were accrued during the period in which the upper rental unit was unoccupied.

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: November 16, 2022

Residential Tenancy Branch