Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR, OLC, FFT
Landlord: OPU-DR, MNU-DR, MNDCL, FFL

Introduction

The Tenant filed an Application for Dispute Resolution by Direct Request (the "Application") on July 18, 2022 seeking a cancellation of the Landlord's 10-Day Notice to End Tenancy for Unpaid Utilities (the "10-Day Notice"), an order for the Landlord's compliance with the legislation and/or tenancy agreement, and the recovery of the filing fee for their Application.

The Landlord filed an Application by Direct Request on September 14, 2022 for an order of possession, a monetary order to recover the money for unpaid utilities, and the recovery of the filing fee. Because the Tenant's Application was already in place, the Landlord's Application was crossed to that of the Tenant, for the already-scheduled participatory hearing.

The Landlord amended their Application on September 28, 2022, to add compensation for monetary loss. This was an update of the amount owing by the Tenant for the particular utility in question.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on December 9, 2022. In the conference call hearing, I explained the process and provided the attending parties the opportunity to ask questions.

At the outset of the hearing, both parties confirmed they received the other's Notice of Dispute Resolution, as well as prepared evidence in advance.

Preliminary Matter – tenancy ending

In the hearing, the Tenant stated they notified the Landlord that they were ending the tenancy, with December 31, 2022 being the final day. They notified the Landlord by email on November 31, 2022. The Landlord stated they received a written notice from the Tenant "about 4 days later."

While the Landlord questioned the method that the Tenant used to advise the Landlord of ending the tenancy by s. 45 of the *Act*, I do not have to resolve that matter because there was no dispute about the ending date of the tenancy. Nor was there any question of rent amounts owing. Additionally, it was the Landlord who sought to end the tenancy by issuing the 10-Day Notice; therefore, I find any issue of proper notification from the Tenant is inconsequential.

Because the tenancy was ending imminently as of the date of this hearing, I find there is no need for rectifying the issue of whether the 10-Day Notice was valid, and reciprocally whether the Landlord is entitled to an Order of Possession via s. 55 of the *Act*. I dismiss the Tenant's Application for a cancellation of the 10-Day Notice, along with their plea for the Landlord's compliance with the *Act*/tenancy agreement which is a matter that would be relevant if the tenancy were continuing. Because the Tenant did not withdraw their Application in a timely manner, I find they are not eligible for reimbursement of the Application filing fee.

I similarly dismiss the Landlord's Application for an order of possession in line with the 10-Day Notice. The sole remaining grounds for consideration in this hearing are listed below.

Issues to be Decided

Is the Landlord entitled to monetary compensation for unpaid utilities pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application, pursuant to s. 72 of the *Act*?

Background and Evidence

The parties signed a tenancy agreement on January 30, 2022 for the tenancy starting on February 1st for a fixed twelve-month term. The rent amount was set at $2,950, payable on the first of each month. The Tenant paid a security deposit of $1,475. The agreement set out that

water and natural gas were included in the rent. There is no indication showing that electricity and heating were included in the rent amount.

The Landlord described the rental unit as existing in a rental property that has its own heating/cooling utility. On their original online advertisement, they stated that utilities would need to be paid by a tenant. At the start of the tenancy, they transferred the internet, as well as the heating/cooling utility to the Tenant -- a statement showing this, as well as the Landlord's authorization adding the Tenant to the account, appears in the Landlord's evidence. They did not state to the Tenant that the electricity utility also had to be assigned to the Tenant for payment. The Landlord paid electricity the following month and attempted to rectify this with the Tenant within the first month of the tenancy.

According to the Landlord, the Tenant paid an initial month of the heating/cooling utility. The statement for that payment, invoice dated March 8, 2022, appears in the Landlord's evidence. On September 28, 2022 via email the heating/cooling utility provider confirmed that it was the Tenant who paid "the invoice issued in early March for February charges, where [the Tenant's] name appears in the bottom-left corner as "c/o"."

Because the electricity utility was not assigned to the Tenant, that utility ceased at one point during the tenancy. The Tenant at that point stated they then would be paying the electricity utility only, and not the heating/cooling utility. This led into negotiations on changing the length of the tenancy agreement, as well as what utilities were included in the rent amount.

According to the Tenant, they asked repeatedly about the necessity of changing the electrical utility to their own name; however, the Landlord told them no. The rationale, as stated to them by the Landlord, was that the heating/cooling utility was all inclusive. After the single incident of the power shutting off, the Tenant concluded that the electrical utility in their name was absolutely necessary and that was the reason they insisted on making that change with the Landlord. They knew that the utilities were not set out to them accurately. Going forward, they paid rent, and the electrical utility, but not the heating/cooling utility. Through research in the rental property area, they discovered on their own that the common practice was for the heating/cooling utility to be included in the rent amount. They agreed with the idea that these were hidden costs to them, ones that were not advertised as such initially, not discussed at the time of signing the tenancy agreement.

In the middle of all the correspondence between the parties concerning the start of the tenancy, the Landlord had forwarded the email from the heating/cooling utility provider. This was the initial set up that enable the Tenant to pay bills directly; in effect, they were added as

an authorized user on the account. On February 3, 2022, the Landlord forwarded the pre-authorization debit form to the Tenant.

On February 25, 2022, after the power outage, the Landlord advised the Tenant that the Landlord themself had paid the electricity utility bill through to March 31, 2022. They advised the Tenant it was time to set their own account, in order to pay the electric bills "from April moving forward." The Tenant followed up with an email on February 28, reiterating that they signed up with the heating/cooling utility, thinking that there was no electrical utility required. They stated their surprise at "an unexpected monthly bill which I was completely unprepared for, did not budget for when I agreed to this rental, and had not been made aware of during the negotiation process." The Tenant noted the lower cost for electricity, as they were made aware of prior to the tenancy starting, was "part of [their] decision to rent this place."

On March 2, 2022 the Landlord sent a lengthier message to the Tenant explaining their position on the need for the Tenant signing on with the electricity utility provider. The Landlord stated this was a "miss", yet they agreed to pay the first electricity bill to the Tenant, and then subsidize a portion of that utility going forward. By March 9, this offer was clarified as $50 reduced from each monthly rent.

In further communication, on March 11, 2022 the Tenant stated that the electricity utility was "completely omitted from all discussions and answers to our questions pre-signing". They were not clear on what was covered by the electricity provider and what was provided by the heating/cooling utility, and what the total cost for utilities for the rental unit were.

In response to this, the Landlord offered a reduced-term 6-month lease, or the same with the Landlord covering the full cost of the electrical bill for the period ending July 31.

On March 15, 2022, the Tenant informed the Landlord they would pay the electrical bills going forward from April 1st. This will "complete [their] responsibility for the utilities' cost for this unit." They requested to be removed from the heating/cooling utility account, meaning the Landlord would pay that account from March 2022 onwards. The Landlord responded the following day to say they did not agree to those terms. Following this, the Tenant also cited the Landlord's misrepresentation about appliances within the unit that required repairs since the start of the tenancy, as well as the functionality of the air conditioning. The bottom line for the Tenant was set out in this March 17 message: "Six month extendable lease at $2900 + [electricity utility]. You pay [the heating/cooling utility]."

In sum, the Landlord maintains they informed the Tenant informally about two required utilities at the start of the tenancy. The Tenant maintains that they were only given instructions about

signing on with the heating/cooling utility provider, and not electricity, despite requesting clarification on that.

Going forward, the Tenant did not pay for the heating/cooling utility. The Landlord attempted to end the tenancy for this reason by way of the 10-Day Notice on July 14, 2022. As of the date of the hearing, the Landlord claimed the following amounts: $141.75 (April-May); $246 (June-July); $124.71 (August-September); and $110 (October-November). This totals $622.46. The Landlord amended their Application to include the August-September amount. They brought the information about the final bill amount ($110) to the hearing and at my request they provided a copy of that last invoice for my review.

In their written statement prepared for this hearing, the Tenant outlined the following points:

- the Landlord did not disclose that the electrical service was obtained through a separate electricity utility provider – the Landlord informed the Tenant that the heating/cooling utility was the same
- the Landlord quoted an estimated cost to the Tenant for utilities; however, this did not correspond to the heating/cooling utility bills – the Landlord is attempting to transfer fees to the Tenant, with the heating/cooling costs being "at least partially related to building costs that were not disclosed or included in the agreement".

Analysis

Under the *Act* s. 7, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss an applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

To be clear, my analysis focuses on the Landlord's Application, as amended, that they are properly owed compensation for the heating/cooling utility that the Tenant did not pay.

Applying the four criteria listed above, I find as follows:

- I find the Landlord has shown that a loss to them exists. The tenancy agreement, as signed by the parties on January 30, 2022 does not indicate that electricity and heat are included with the rent amounts. From that, I find, in the most basic terms, that the agreement was that the Tenant would pay for those utilities.

  The Tenant has not provided evidence, either documented in emails or texts, or through their testimony in the hearing, that the Landlord definitively stated that the Tenant would *not* be required to arrange for electricity utility billing. The discussions on all sorts of points and details concerning the rental unit and what was in place or needed at the start of the tenancy was in place (even to the level of detail concerning the hanging of pictures, availability of outlets, backing a vehicle into a parking space, and a second oven rack), but nowhere was the topic of what was required for utilities raised. The parties exchanged several draft copies of an agreement (one that was not signed) discussing miscellaneous points, but nowhere was the specific topic of utilities raised. If that dialogue was in the form of verbal confirmation, the Tenant did not provide enough detail to back up their charge that the Landlord misrepresented either the need for utilities to be set up, or specifics on amounts.

  The Tenant would have to provide evidence that outweighs that of the Landlord on this singular point; however, I find there is not sufficient evidence from the Tenant that they asked for clarity from the Landlord on this important point. I appreciate the difficulty in having to provide recall on specific discussions had, even in person; however, with a great deal of evidence showing protracted negotiation on several different aspects of the tenancy, both prior to and after signing, I do not understand why an important aspect of having to pay for utilities was not covered. There is no record of the Tenant making an inquiry, as such, to the Landlord.

  The Tenant, respectfully, was hyper-vigilant on many aspects of the tenancy, and it appears justified given what they described as a bad experience with a previous landlord, yet while they insisted they inquired about the need to have electricity changed to their own account, they have no proof of that. The Tenant claimed they were aware of the need of having the electricity assigned to them. Given their other evidence on what happened with the heating/cooling level of control within the rental unit, I find they

insisted on their preference to pay only for electricity, which appears to be something more in their own control.

In sum, I find the Landlord has shown that a loss to them exists. The Tenant has not provided evidence that outweighs that of the Landlord to show there either a misrepresentation on the need for utilities, or their amounts.

- Aside from the dialogue on miscellaneous points (which in most cases were justified, *e.g.*, given the flaws in appliances), what is in place is the basic agreement the parties signed on January 30, 2022. I find there is no misrepresentation in that document. The evidence is clear that the Tenant did not pay the required heating/cooling utility, as they agreed to when they signed the tenancy agreement. This is a breach of the tenancy agreement. It does not hinge on whether they knew what sort of amounts were required; rather, this is something the Tenant agreed to from the outset.

  The Tenant can state they were not fully informed on what amounts entailed (the advertisement they provided in their evidence lists air conditioning as a feature, and does not indicate it is included with the rent amount); however, there is no proof they made inquiries on typical utility amounts, either in the early stages of their dialogue with the Landlord, nor at the time of signing the tenancy agreement. The Landlord's message of February 3 ("I am forwarding you the email from [heating/cooling utility provider] for heating and cooling of the unit") does not include any indication that it includes electricity. Prior to this, there was no inquiry from the Tenant that the electricity utility needs to be set up.

  From January 22, 2022 onwards there was no additional dialogue about the utility amounts or timing of payments. Again, if that was verbal, the Tenant has not provided sufficient evidence to outweigh what the Landlord presented as a completed, signed tenancy agreement.

  After signing, there was no room for negotiation, though the Landlord did take that on. The Tenant went so far as to pay one invoice for the heating/cooling invoice, then stated their preference for paying only for electricity. As a co-signee, this left the Landlord in a difficult spot. The Tenant feels this is justified given the Landlord's misrepresentation; however, as above, I find there was no misrepresentation where the amounts appear to have not been discussed or raised for discussion.

  In summary, I find the Tenant breached the tenancy agreement by not paying for the heating/cooling utility they agreed to.

- The Landlord provided evidence of the utility amounts owing. These are four consecutive invoice amounts from the heating/cooling utility provider. This total amount, as of the hearing, is $622.46. The *Residential Tenancy Branch Rules of Procedure*, in particular Rule 4.2, allow for an amendment to an application at the hearing. I find it could be reasonably anticipated that a further invoice would arrive after the Landlord amended their Application; therefore, I allow for the amendment.

- I find the Landlord acknowledged the information about the electrical utility account was "missed". This is an acknowledgement without accepting blame for an omission. After this they attempted to negotiate for partial payment of the utility amounts going forward, with an impact on the monthly rent amount they accepted. I find the Landlord did make a concession by paying one utility bill, as a token gesture to the Tenant, likely for inconveniences arising from appliances and other queries in the rental unit. I find the Landlord's efforts at reaching a halfway point with the Tenant constitute measures of mitigating the impact of utility costs to the Tenant; however, it does not excuse the Tenant from paying those utilities as they agreed to in the original tenancy agreement.

In conclusion, I find the Tenant is obligated to pay the utility amounts owing for the reasons outlined above. The Landlord has shown this total amount is $662.46.

I find the Landlord was successful in this claim, amended as it was from the original and concerning only compensation. I find the Landlord is entitled to recover the $100 filing fee they paid for this Application.

Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of $762.46. I provide the Landlord with this Monetary Order in the above terms, and they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Monetary Order, the Landlord may file this Monetary Order in the Small Claims Division of the Provincial 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 s. 9.1(1) of the *Act*.

Dated: January 9, 2022

Residential Tenancy Branch