Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, FFT**

Introduction
This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 10:00 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference..

As only the tenants attended the hearing, I asked the tenants to confirm that they had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenants testified that they had served the landlord at his residence with the notice of this hearing and their evidence by Canada Post registered mail on September 22, 2022, and referred to the Canada Post registered mail receipt with tracking number. The registered mail tracking number is recorded on the cover sheet of this decision. I deem the landlord served with the Notice of Dispute Resolution Hearing package on September 27, 2022, the fifth day after mailing in accordance with sections 89 and 90 of the Act.

This hearing proceeded in the absence of the landlord pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Can the tenants recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenants gave the following testimony. The rental unit is an upper unit located in a single family house comprising of upper and lower suites. The lower suite is tenanted by an unrelated tenant.

According to a clause in the tenancy agreement addendum, clause 19, the tenants were required to put the utilities in their own name and the landlord would reimburse the tenants for the utilities used by the lower unit tenant. Clause 19 was read out to me during the hearing. Clause 26, provided as evidence by the tenants, notes that,

> *"all costs related to private garbage recycling collection are borne by the tenants of the other rental unit on the property. An amount of 50% of the monthly costs will be reimbursed to the landlords on the same schedule as utility payments"*

The tenants complained to the landlord, as the landlord wasn't reimbursing them for the lower unit tenant's utility usage for up to 7 months at a time. This led to the filing of the application for dispute resolution seeking an order that the landlord comply with putting the utilities in his own name. The tenants testified that since filing the dispute, the landlord has put the hydro, natural gas, water and sewer utilities into his own name but not the garbage and recycling. The tenants testified that they continue to pay 100% of the bill for that utility and that the lower unit tenant has been using it without compensation from the landlord.

Analysis

Residential Tenancy Branch Policy Guideline PG-1 [Landlord and Tenant – Responsibility for Residential Premises] states the following:

SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.

2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

Based on the undisputed testimony before me, I am satisfied the landlord has included unconscionable terms in the tenancy agreement, namely clauses 19 and 25 of the addendum which imposes the requirement that the tenants put utilities in their own name for premises that they do not occupy, namely the lower unit of the house. The tenants testified that the landlord has since put the utilities into his own name, with the exception of the garbage and recycling.

The requirement of tenancy agreement that the tenants have the garbage and recycling in their own name remains unconscionable and I order that the landlord put the garbage and recycling utility into the landlord's name forthwith. The landlord is required to do this by **February 14, 2023**. If the landlord fails to do so, the tenants are at liberty to seek compensation against the landlord for his failure to comply with the director's order.

As the tenant's application was successful, the tenants are also entitled to recovery of the $100.00 filing fee for the cost of this application. In accordance with the offsetting provision of section 72, the tenants may reduce a single payment of rent due to the landlord by $100.00.

Conclusion

The landlord is ordered to put the garbage and recycling utility into his own name.

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: January 24, 2023

Residential Tenancy Branch