



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes (T) CNR, CNC, PSF, OLC, FFT
(L) OPC, FFL
(L) OPU, MNRL, FFL
(T) CNR, FFT

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause, issued July 4, 2023, under section 47 of the Act;
- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) issued June 30, 2023, under sections 46 and 55 of the Act;
- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) issued July 2, 2023, under sections 46 and 55 of the Act;
- an order requiring the Landlord to provide services or facilities required by the tenancy agreement or law;
- an order requiring the Landlord to comply with the Act, regulation and/or tenancy agreement; and,
- a request for reimbursement of the filing fees paid by each party for its respective applications.

Service of Dispute Resolution Packages and Evidence

The parties raised no objections to the exchange and/or receipt of the dispute resolution packages from the other party and no objection as to the evidence submitted for this hearing by the party on their respective applications.

Preliminary Matters

At the commencement of the hearing, Tenant H.K. advised she had moved out of the rental unit on August 31, 2023; and, Tenant C.K. stated he had moved out of the rental unit on June 30, 2023. Tenant H.K. stated that she and the Landlord had conducted a walk-through final condition inspection of the rental unit on August 31, 2023. The Landlord had possession of the rental unit as of August 31, 2023 and thus an order for possession was not required. Therefore, I make no findings on the Landlord's requests for an order of possession.

As the Tenants had vacated the rental unit, the Tenants' request for orders regarding the Landlord's provision of facilities or services under the tenancy agreement was moot. Similarly, the Landlord's One Month Notice to End Tenancy for Cause issued July 4, 2023 based upon allegations regarding the Tenants conduct is also moot. I make no findings on the One Month Notice issued July 4, 2023.

The Landlord had issued a 10 Day Notice on July 26, 2023 for unpaid rent in the amount of \$1,250.00. The Tenants had received this 10 Day Notice in their mailbox on July 5, 2023 and applied for dispute resolution on July 8, 2023. The Tenants had paid the outstanding rent on July 3, 2023 and requested that their application to cancel this 10 Day Notice be withdrawn. A copy of the rent payment was submitted into evidence. The Landlord did not object. The parties agreed there was no issue concerning unpaid rent under the Notice. I make no findings on the 10 Day Notice issued July 2, 2023.

The remaining issues arising from the tenancy concern: (a) the 10 Day Notice issued on June 30, 2023 for unpaid utilities (gas); and, (b) the 10 Day Notice issued July 26, 2023 for unpaid utilities (water).

Issues to be Decided

Whether the Landlord or the Tenants are responsible for the payment of utilities under the tenancy agreement, and whether payment was made by the party responsible under the tenancy agreement.

Whether either party entitled to reimbursement of the filing fee for their respective applications.

Background and Evidence

Evidence was provided showing that this tenancy began on February 1, 2021 for a fixed term to February 1, 2022. Both parties submitted into evidence their copy of the 2021 tenancy agreement. This tenancy agreement was between Tenants C.K., H.K. and two

other co-tenants and the Landlord. The monthly rent was \$2,800.00 due on the first of the month. The Landlord collected a security deposit of \$1,400.00 on December 20, 2023 and a pet damage deposit in the amount of \$1,400.00 on February 1, 2021.

At the expiration of the 2021 tenancy agreement, Tenants C.K. and H.K. entered into a new tenancy agreement with the Landlord for the term February 1, 2022 to February 1, 2023. The other two co-tenants had moved out of the rental unit by that time. The monthly rent remained at \$2,800.00 due on the first day of the month. Each party submitted their copy of the 2022 tenancy agreement into evidence.

1. 10 Day Notice issued for Unpaid Gas Bill

On June 30, 2023, the Landlord issued a 10 Day Notice for unpaid gas utility charges in the amount of \$1,911.89 due as of June 1, 2023. The effective date of the Notice was July 10, 2023. A copy of the Notice was provided in evidence. The Landlord submitted a copy of a demand letter to the Tenants also dated June 1, 2023, referencing the gas bill in the amount of \$1,911.89 as included with the letter, and requesting payment within thirty (30) days. A copy of both the letter and the utility bill were provided in evidence. The gas bill bears a due date of April 28, 2023 and the second page of the bill states it is a final notice with a disconnection warning in the event payment is not received. The gas bill provides that it is for the service period January 2, 2021 to January 31, 2022 and was mailed to the Landlord at his home address.

Tenant H.K. testified the tenancy agreement that was in effect during that time provided that the Landlord was responsible for providing heat and natural gas. Tenant H.K. submitted her copy of the tenancy agreement for 2021 into evidence. Tenant H.K. stated that the rental unit's heating system is gas-generated and provided a photograph of the furnace and pilot light. The Tenants both testified that neither they nor their previous co-tenants had received a billing statement from the gas utility while in the rental unit. This confirmed their view that the Landlord was responsible for the gas utility bills, noting that the billing statement was sent to the Landlord. The Tenants submitted a screenshot of a text message from the Landlord dated March 10, 2023 which they state is when the Landlord first informs them of the unpaid gas bill for 2021 and advising the Tenants to pay before service is terminated. In the text, Tenant H.K. replies as to why they have not been informed earlier, to which the Landlord responds they should contact the provider. Tenant H.K. stated she contacted the gas company in an effort to determine why a billing statement had not issued for 2021 until April 2022 and said she was given no explanation. By the time of her conversation with the gas utility, the unpaid balance had increased to \$2,934.01 as of a utility reading dated April 25, 2023. The Tenants provided a copy of that billing statement into evidence. The statement was in Tenant H.K.'s name. Tenant H.K. stated she entered into a payment plan for the \$2,934.01 bill with the gas company in order to avoid the gas company terminating service and their losing heat as they were still occupying the rental unit. The Tenants' maintained the Landlord was responsible for the gas bill under the terms of the tenancy agreement and requested reimbursement in the amount of \$2,934.01.

2. 10 Day Notice issued for Unpaid Water Bill

On July 26, 2023, the Landlord issued a 10 Day Notice for an unpaid water bill in the amount of \$252.01 due as of June 26, 2023. The effective date of the Notice was August 5, 2023. A copy of the Notice was provided in evidence together with a copy of the registered mail and receipt bearing the Canada Post tracking number. On July 26, 2023, the Landlord served a written demand to the Tenants concerning the water bill, stating the amount then due was \$319.67, referencing the bill as attached and requesting payment within thirty (30) days. A copy of the Landlord's demand letter and water bill were submitted into evidence. The Landlord also submitted a copy of the registered mail receipt identified for service of the demand letter to the Tenants; however, the registered mail receipt provided in evidence is dated for June 28, 2023.

The Landlord's monetary worksheet dated August 7, 2023 submitted with the Landlord's application for this Notice for unpaid water utility states, in addition to unpaid gas bill of \$1,911.89, the unpaid water bill in the amount of \$252.01.

Analysis

Section 46(6) of the Act provides that if (1) a tenancy agreement requires the tenant to pay utility charges to the landlord and (2) the utility charges remain unpaid after the tenant is given a thirty (30) day written demand for payment, the landlord may treat the unpaid utility charge as unpaid rent and give notice under section 46 to end the tenancy.

Rule 6.6 Residential Tenancy Branch Rules of Procedure states:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

1. 10 Day Notice for Unpaid Gas Bill

The threshold issue regarding the unpaid gas bill is whether the tenancy agreement required the Tenants to pay for this service. Each party provided a different copy of a tenancy agreement for the period February 1, 2021 to February 1, 2022; and, the period February 1, 2022 to February 1, 2023. The copy submitted into evidence by each party

was signed by the Landlord and Tenants. However, each party's copy had differing provisions whether heat and/or natural gas was included in the monthly rental payment.

Tenant H.K. explained that for each tenancy agreement, the parties met at a local restaurant not far from the rental unit. Tenant H.K. stated that on each occasion, the Landlord provided the tenancy agreement form (which was an RTB standard tenancy agreement form). She further testified that the Landlord maintained the originals of the tenancy agreements and provided the Tenants with a copy. The 2021-2022 tenancy agreement she had had check marks indicating that both heat and natural gas were included in the monthly rent. Additionally, the tenancy agreement effective for the annual term commencing February 1, 2022 showed that heat was included, but natural gas was not checked off as included. Tenant H.K. provided the email from the Landlord that accompanied his forwarding of the tenancy agreement effective February 1, 2022 together with the tenancy agreement attached to that email.

Neither of the Landlord's copies of either tenancy agreement provided that either heat or natural gas were included in the monthly rent. The Landlord stated that there were duplicate originals signed by the parties, and that for the 2021 tenancy agreement, his recollection was that the parties first met at the local restaurant but then later signed the agreement at the rental unit.

Tenant H.K. testified that during the tenancy they paid other utilities (cable, electric and water) but relying on the tenancy agreement, had not transferred the gas bill to their names. The Tenants had submitted evidence that the heat furnace was gas and the Landlord did not dispute this. Tenant H.K. stated that until receiving the March 2023 text from the Landlord, they were never aware they had to pay for gas. Tenant H.K. noted that the disconnect notice first sent by the gas company was in the Landlord's name and mailed to his home address.

While the Landlord's position is that the tenancy agreement did not include heat as part of the monthly rent, I find the Tenants' evidence on the parties' competing claims more credible.

Both parties have presented equally probable scenarios as to which party (landlord or tenant) bore the cost of providing heat (a gas furnace) for the rental unit. However, the onus falls on the Landlord to shift the balance in his favor and the Landlord has not provided sufficient evidence to do that. The Tenants' testimony was credible and consistent with their conduct. Tenant H.K. stated that the Landlord forwarded to her by email the 2022 tenancy agreement and provided the email with the attachment which indicates that heat is included as part of the monthly rent. The Landlord was responsible for the preparation of the tenancy agreements. I note that the Tenants occupied the upper level of the rental unit and there were other tenant(s) unrelated to this matter that occupied other portions of the rental unit. The gas utility billing statements did not distinguish the Tenants' rental unit from other rental units in the home. It is implausible that at the time of entering into the tenancy agreements the

Tenants would agree to pay other unrelated tenant(s) heating or gas charges. The Tenants also had a clearer recollection of events surrounding the Landlord's preparation of the tenancy agreements and where the parties met and signed the agreements on each occasion.

I find that the tenancy agreements submitted by the Tenants for February 1, 2021 to February 1, 2022, and February 1, 2022 to February 1, 2023 and thereafter on a month-to-month basis, are the tenancy agreements governing this dispute. I find that under each tenancy agreement the Tenants' monthly rent included the provision of heat by the Landlord. As the heat was produced by a gas furnace, I find that the Landlord is responsible for the gas utility costs during the Tenants' tenancy. I further find that Tenant H.K. assumed the Landlord's responsibility for the payment of the then-outstanding gas utility bill in the amount of \$2,934.01, testifying that she entered into a payment arrangement with the gas provider to assure continued service and she had made payments accordingly. As such, I find that the Tenants are entitled to reimbursement for the gas utility charges in the amount of \$2,934.01 from the Landlord.

2. 10 Day Notice for Unpaid Water Bill

Both tenancy agreements provide that the Tenants were responsible for the payment of the water bill. Indeed, the Tenants acknowledged that they were responsible for payment of the water utility bills.

The Landlord issued the 10 Day Notice for an unpaid water bill in the amount of \$252.01 due as of June 26, 2023. However, the Landlord submitted no evidence of a thirty (30) day written demand to the Tenants prior to issuing the 10 Day Notice on June 26, 2023 as required under section 46(6). Rather, the Landlord's evidence of written demand to the Tenants was dated June 26, 2023 (the date the Notice was issued) for an unpaid water bill in the amount of \$319.67, with an attached water bill for the period April 1, 2023 to June 30, 2023.

Therefore, I find that the Landlord did not comply with section 46(6) by making written demand on the Tenants thirty days prior to issuing the 10 Day Notice on June 26, 2023 for the unpaid water utility bill. I find the Notice does not comply with section 46(6) and the Notice is cancelled.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, to claim a damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide

evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to a claim for a monetary award.

In this case, the Landlord has provided water utility billing statements in the amount of \$252.01 for the period ending July 11, 2023 and \$319.67 for the billing period ending June 30, 2023. There is no dispute the tenancy agreements provide that the cost of water service is not included as part of the rent. A review of the water bills submitted into evidence do not clearly reflect that the \$252.01 unpaid balance is included as part of the \$319.67 billing statement. Moreover, the Landlord's monetary worksheet filed with the application for dispute resolution of this 10 Day Notice and subsequent to the date of the water bill for \$319.67 provides that the outstanding water bill is \$252.01. Evidence was not submitted by the Tenants to corroborate their position that they had paid the water bill.

I find based upon the tenancy agreements, the Tenants are responsible for water utility charges arising during the term of the tenancy. I find that the Landlord has established that there are unpaid water use charges in the amount of \$252.01 for which the Tenants are responsible.

3. Requests for Reimbursement of the Filing Fee

As each party was successful in their application at issue in this hearing, there is a set-off of the competing requests for reimbursement of the application filing fee from the other party. Therefore, I decline to award either party reimbursement of the filing fee for their respective application under section 72 of the Act.

Conclusion

I grant the Tenants a Monetary Order in the amount of **\$2,682.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for reimbursement of the gas utility service fees	\$2,934.01
less reimbursement to Landlord of the unpaid water service fees	(\$252.01)
Total Amount	\$2,682.00

The Tenants are provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 08, 2023

Residential Tenancy Branch