



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities, an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord and one of the named tenants attended the hearing, and the tenant also represented the other named tenant. The parties were given the opportunity to question each other and to give submissions. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord withdrew the application for an order permitting the landlord to keep the security deposit or pet damage deposit, and I dismiss that portion of the landlord's application.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenants for unpaid utilities?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on March 1, 2023 and reverts to a month-to-month tenancy after February 29, 2024, and the tenants still reside in the rental unit. Rent in the amount of \$3,800.00 is payable on the 1st day of each month and there are no rental arrears. On February 15, 2023 the landlord collected a security deposit from the tenants in the amount of \$1,900.00, as well as \$200.00 for access devices, and no pet damage deposit was collected. The rental unit is a strata townhouse, and neither the landlord nor the landlord's agent reside on the property.

The landlord has provided a revised Monetary Order Worksheet setting out the following claims:

- \$127.21 for QMC for March;
- \$176.12 for QMC for April;
- \$170.96 for QMC for May;
- \$169.85 QMC for June;
- \$184.65 QMC for July;
- \$223.40 QMC for August; and
- QMC for September TBA.

The landlord's agent also testified that the amount owed for September, 2023 is \$188.50.

The landlord's agent testified that the tenancy agreement provides for the tenant to pay the QMC Invoices. QMC is an energy provider, providing heat and cooling to the rental unit through hot water. It states, "Tenant is responsible for QMC invoices each month." Copies of Invoices from Quadlogic Meters Canada Inc. have also been provided for this hearing. The landlord made a demand for payment for 2 months, and the tenant agreed to this hearing because the tenant doesn't believe he has to pay the Invoice. If the owner doesn't pay the Invoice, the strata will get involved and go after the owner. The QMC Invoices are not included in the rent. All Invoices have been provided to the tenants.

The landlord has also provided a copy of the advertisement for the rental unit, which states that not included in the rent are strata move-in/out Fees, electricity, telephone, cable, internet, Quadlogic Meters Canada (hot water, heating and cooling).

The landlord has also provided a copy of a letter from the landlord to the tenants dated May 23, 2023 which states, in part:

"Firstly, please note that our role as the landlord is to inform you about the existence of heating, cooling and hot water services provided by QMC. While we are not directly responsible for the billing process or the specific breakdown of charges, it is important to recognize that these services are separate from the rent and are billed by QMC based on their own levies and consumption rates. We understand that you may have questions or concerns regarding the breakdown of charges in the QMC invoice. While we may not have the specific knowledge to explain the billing process of QMC, we encourage you to contact them directly for clarification and assistance in understanding the charges.

“The tenancy agreement you signed clearly states that “Tenant is responsible for QMC invoice each month.” This clause establishes your obligation to pay the QMC invoice as a separate expense apart from the rent. As the landlord, we are required to enforce the terms of the tenancy agreement and ensure that all financial responsibilities are met.”

The tenant testified that when reviewing the tenancy agreement, the tenant saw the term about QMC Invoices, but didn't know what that is, and in an email on February 14, 2023 the tenant asked. The following day the tenant received a reply stating that the tenants would still need to open their own hydro account for electricity.

This issue arose regarding additional charges that are not for heating, cooling and hot water usage. There are 2 categories: Thermal Capacity Levy and Usage. Based on the emails exchanged, the tenants were supposed to only pay for heating and cooling, not for the Thermal Capacity Levy indicated in the Invoices. The Invoices are very itemized, and the levy is not usage. The tenant asked, and was told that he only had to pay for usage, and if the tenant had been told that he had to pay the levy, the tenant would not have signed the lease. The levy ought to be specifically mentioned in the tenancy agreement; there is no other way to know what the charges are. When the tenant asked what was in the Invoices, it should have been mentioned then.

The tenants have also provided a copy of the bylaw, with certain sections highlighted.

The highlighted sections of the bylaw are:

Section 8 – Levies and Charges and Other Costs:

8.1 From the date the owner requires service, as indicated in the application referred to in Section 7.6(a), the owner must pay the city the levy set out in part 2 of Schedule C.

Payment of Levy or Charge:

8.5 The owner of a designated building must pay the city the amount of each levy or charge on or before the due date set out in each bill referred to in section 8.4.

The tenants are not opposed to paying for the heating, cooling and domestic hot water, but not the Thermal Capacity Levy. The tenant tried to pay the heating, cooling and hot water, but the landlord didn't accept the e-Transfer. When asked why the landlord would leave out a portion of the Invoice, the tenant responded that it could be a mistake, or maybe to hide the extra amount.

SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlord gets the Invoice and passes it on to the tenant. The levy is on Fortis gas and hydro bills. The bylaw says the owner of the building, which relates to the building, and the landlord owns the unit. This is more of an individual unit. The landlord's agent totally agrees that it's high, but it is not a choice.

SUBMISSIONS OF THE TENANT:

The tenant agrees that there are low levels, but the tenant didn't ask about those, but more particularly the large amount of the levy.

Analysis

A landlord and a tenant have an obligation to comply with the terms of a tenancy agreement. However, the law states that a landlord may not include in a tenancy agreement terms that are unconscionable. The regulations define "unconscionable" as a term that is oppressive or grossly unfair to one party.

The statement in the tenancy agreement: "Tenant is responsible for QMC invoices each month," is not clear, and the tenant testified that he didn't know what it meant and asked for clarification. The tenant's position is that the landlord responded that QMC charges are for heating, cooling and hot water usage, but does not mention a levy, which limits the invoices to usage, and not other fees.

The Invoices in question show a Summary of Charges: Heating, Cooling, Domestic Hot Water Heating, a Thermal Capacity Levy and GST. The tenant disputes only the Thermal Capacity Levy, which is much higher cost than any of the other items on the Summary of Charges. The tenancy agreement shows that hot water, electricity, natural gas and heat are not included in the rent.

The bylaws state that the owner of a designated building must pay the city the amount of each levy or charge.

Because the landlord has not included any information to the tenant about a levy in addition to heating, cooling and hot water, I am not satisfied that the tenants agreed to the levy when signing the tenancy agreement. I find that the simple statement in the tenancy agreement, "Tenant is responsible for QMC invoices each month," is not a sufficient term unless the tenant is aware of what a QMC invoice is or the specific terms of the invoice.

Therefore, I dismiss the landlord's application.

The tenant testified that he attempted to pay the usage portion of the invoices, which were refused by the landlord because the tenants didn't include payment for the levy. I leave it to the parties to calculate the amounts owed to the landlord without the levy and to adjust any applicable taxes on usage.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

I direct the parties to calculate the amounts owed to the landlord for usage and applicable taxes on usage only.

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 20, 2023

Residential Tenancy Branch