



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OLC & FF

Introduction:

This hearing dealt with an application by the tenant requesting that the tenancy agreement be amended to address how the utilities are paid. The tenant was also seeking an order for the landlord to comply with the *Act* respecting access to the rental unit and to remove appliances from the common laundry area. Both parties appeared for the hearing and were granted the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined:

Is the material term in the tenancy agreement between the parties unconscionable?

Background and Evidence:

This tenancy began on January 1, 2008 for the monthly rent of \$1,030.00 and a security deposit of \$515.00 was paid on December 13, 2007. A material term of this tenancy agreement, which appears to be a verbal agreement, is that the tenant will carry the utilities in her own name and pay 60% while collecting 40% from the lower unit tenant.

This agreement became problematic from the start where the tenant had to cover the full cost of utilities while being unable to collect the amount owed from the lower unit tenant. This situation took several months to resolve when the landlord paid the tenant the outstanding amount. The tenant believes this arrangement is unfair as she has no authority or capacity in which to collect the utilities owed by the lower unit tenant but she carries the responsibility of paying for utilities which are not associated with her rental unit. The landlord submits that this arrangement can work and that he would pay any shortage experience by the tenant. However, the landlord did acknowledge that it took several months for this issue to be resolved earlier in the tenancy.

Analysis:

The main issue before me is determining whether the term of this tenancy respecting the payment of utilities can be upheld. All other issues between the parties were discussed and resolved.

In considering this matter I considered whether it is fair and reasonable for the tenant to carry the responsibility of having the utilities in her name for two separate rental units. The structure of the verbal agreement between the landlord and his tenants is that the

upper unit will cover 60% of the utilities and the lower unit will cover 40% of the utilities. However, when the lower unit tenant fails to pay this sum the financial loss is carried solely by the upper unit tenant.

Section 1 of the *Residential Tenancy Policy Guidelines Manual* provides the following respecting shared utilities:

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 unconscionable⁴ 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.

Section 8 of the *Residential Tenancy Policy Guidelines Manual*, defines unconscionable as:

Under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

Terms which are unconscionable are not enforceable. Whether a term is unconscionable depends upon a variety of factors. To be unconscionable the term must be oppressive or grossly unfair. A test for determining unconscionability is whether the agreement is so one-sided as to oppress or unfairly surprise the other party.

I find that this term of the tenancy agreement is unconscionable and cannot be enforced. It is grossly unfair to the tenant to require her to put the utilities in her name for the entire rental unit when she only occupies one of the units. I find that it is reasonable that the tenant pay 60% of the utilities; however, I reject the term of the tenancy agreement requiring the tenant to carry the utilities in her name.

I Order that the landlord place the utilities of this rental unit in his name and through the tenancy agreement with his tenants he can collect the pro-rated portion of the utility costs from each tenant. I Order that the landlord has the utilities transferred to his name by **February 1, 2009**. Failure to comply with this Order could result in liability under the Act.

Conclusion:

I have found a material term of the tenancy agreement between the landlord and the tenant to be conscionable. I amend the tenancy agreement requiring that the tenant pay a pro-rated portion of the utilities, or 60% of the utilities, and I have ordered that the utilities be transferred from the tenants name to the landlord's name by **February 1, 2009**.

Having granted the tenant's application I also Order that the tenant may recover the \$50.00 filing fee paid for this application from the landlord by deducting the sum of \$50.00 from her next month's rent.

Dated December 15, 2008.

Dispute Resolution Officer