



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting him to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute. The tenancy began on July 1, 2009 and ended on February 28, 2011. The tenants paid a \$325.00 security deposit. The rental unit is one of three in the residential property.

The tenancy agreement lists the items included in the rent and does not specifically include utilities in that list. The tenancy agreement provides that "Unless included above in writing, the tenant is responsible for all other utilities and services."

The tenants did not pay for utilities during the course of the tenancy. Approximately one year into the tenancy, a new property manager assumed responsibility for the rental unit and invoiced the tenants for 25% of the total utility bill. The tenants disputed responsibility for any part of the utilities.

The interpretation of the contract is at issue. The landlord claims that because the tenancy agreement does not include utilities, he should be able to charge a reasonable amount for utilities. He has apportioned 25% to the tenants because the upper unit pays 45% and another lower unit pays 35%.

The tenants argued that because the contract is vague, they should not be held responsible for utilities at all. They further argued that whereas there were 2 of them

living in the rental unit, they did not have a dishwasher or access to laundry facilities and the upper unit housed 7 people who used considerably more utilities.

Analysis

The landlord drew up the contract and bore the obligation to ensure that the terms therein were certain and the obligation of the parties well-defined. While there is a phrase that indicates that the tenants would be held responsible for utilities, it does not assign a percentage or even express that the unit was not separately metered. I find that pursuant to the rule of *contra proferentem*, the ambiguity in this term must be resolved against the landlord who drafted the contract.

Further, the landlord failed to request a contribution toward utility payments until almost one year into the tenancy. I find that the landlord's failure to request utility payments for the first year of the tenancy amounts to an estoppel by conduct. By not requesting utility payments, the landlord gave the tenants the impression that they were not responsible for any portion thereof.

For these reasons I dismiss the landlord's claim.

Residential Tenancy Policy Guideline #17-2 provides as follows:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

There is no evidence that the tenants have extinguished their right to the return of the deposit. In the spirit of administrative efficiency and pursuant to the terms of the Residential Tenancy Policy Guidelines, I order that the landlord forthwith return to the tenants the \$325.00 security deposit together. I grant the tenants a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The claim is dismissed. The landlord is ordered to return the security deposit to the tenants.

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: June 27, 2011

Residential Tenancy Branch