Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by her agent.

The tenant testified that she served the landlord with the dispute resolution package by leaving it in the landlord's mailbox. The landlord acknowledged receipt. Pursuant to section 89, leaving these documents in a mailbox is not an acceptable method of service; however, the landlord had actual notice of these proceedings. On the basis of this evidence, I am satisfied that the landlord was served with dispute resolution package.

Preliminary Issue – Landlord's Claim

The landlord's submissions included a claim for payment of the outstanding hydro amount and costs. I informed the landlord at the hearing that there was no application from the landlord before me. The landlord has not filed an application and no application was scheduled.

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions

regarding costs are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional.

I find that the landlord is not entitled to make any claim for compensation for the landlord's costs. I further find that there are no applications by the landlord properly before me.

Nothing in these findings preclude the landlord from filing her own application in the future.

Preliminary Issue – Landlord's Late Evidence

The agent testified that the landlord served the tenant with the landlord's evidence on 29 January 2015 by hand. This evidence was received by the Residential Tenancy Branch at 2050 on 29 January 2015. As the office was not open at this time, it is considered received by the Branch on 30 January 2015. The tenant did not consent to the admission of this evidence. The landlord submitted that the landlord's evidence was served within the time limits prescribed by the *Residential Tenancy Branch Rules of Procedure* (the Rules).

Rule 3.15 sets out that a respondent must receive evidence from the applicant not less than 7 days before the hearing. The definition section of the Rules contains the following definition:

> In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 and the definition of days, the last day for the landlord to file and serve evidence in reply to the tenant's application was 28 January 2015.

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, the tenant acknowledged that she had received the landlord's evidence and had time to review it. On this basis I find that there is no undue prejudice to admitting the landlord's evidence in spite of its late service. Thus I exercise my discretion to admit this late-served evidence.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord comply with the Act, regulation or tenancy agreement? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 15 June 2014. The tenant vacated the rental unit on 4 February 2015. Monthly rent of $900.00 plus one third of utilities was due on the first. The rental unit is one of three units in the residential property. One of the rental units is occupied by the landlord.

I was provided with a written tenancy agreement. The tenancy agreement is in the standard form provided by the Residential Tenancy Branch. The agreement is signed by both the landlord and tenant. On page two, in the box where the rent amount is to be filled in, the words "900 +1/3 Hydro" are typed. The agreement provides at page six that there is an addendum to the agreement. I was provided with a copy of the addendum. The addendum sets out "The tenant…will share 1/3 bill of Hydro-electricity as per the amount billed by the concerned companies." The landlord testified that hydro is specifically not included in rent because of high-seasonal variance.

In or about early June 2014, the landlord and tenant agreed to a reduced hydro allocation for the tenant of one quarter.

I was provided with a hydro bill. The bill is for $1,131.03. The bill is for a two month period.

The tenant testified that she has received three hydro bills, each for a two month period:

- The tenant's portion of the first hydro bill was $140.00.
- The tenant's portion of the second hydro bill was $200.00.
- The tenant's portion of the third hydro bill was $280.00.

The tenant testified that she does not believe that her hydro use could be that high. The tenant testified that she does not have a dishwasher or access to in suite laundry. The tenant testified that at the beginning of the tenancy she was told that the hydro would be approximately $125.00 per month or between $100.00 and $150.00 per month.

I was provided with a note from a previous tenant dated 27 January 2015. In that note, the previous tenant states:

> Upon signing of the Residential Tenancy Agreement, I was explained by the Landlord that the Hydro bill would range between 100 to 200 dollars depending on the season of the year.

The landlord testified that the landlord told the tenant that the hydro bills would be approximately $100.00 and $200.00 per month. The landlord testified that each of the three units has three occupants. The landlord testified that heat to the landlord's unit is radiant heat. The landlord testified that the two other units are electric heat. The landlord testified that the increased utility cost is the result of cold weather and increased heat use.

The landlord submits that the tenant signed a contract that she understood. The landlord alleges that the tenant's claim is frivolous.

Analysis

The tenant asked that I order the landlord to investigate the hydro bill. Specifically, the tenant asked that I require the landlord to determine the allocation of hydro use between the rental units and determine the accuracy of the meter.

I find that the tenant agreed to pay one third of the hydro costs in addition to $900.00 in rent. I find that this amount was later reduced to one quarter of the hydro costs by mutual agreement. The tenant testified that the landlord told her that the monthly hydro costs would be between $100.00 and $150.00. The monthly hydro costs were $70.00, $70.00, $100.00, $100.00, and $140.00. These amounts are within the estimates provided by the landlord at the time the tenancy agreement was entered into.

I find that the landlord has not misrepresented the hydro costs. Accordingly, the contractual obligations of the tenant to pay hydro, at the agreed to rate of one quarter, are enforceable. I decline to order the landlord to investigate the hydro bill as the tenant has failed to prove, on a balance of probabilities, that such an investigation is warranted.

While unsuccessful, I find that the tenant's claim is not frivolous and I reject the landlord's claim that it is.

Conclusion

The tenant's application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: February 06, 2015

Residential Tenancy Branch