



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on May 19, 2016 for a Monetary Order for the cost of emergency repairs and, money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement. The Tenants also applied to recover the filing fee from the Landlords and for “Other” issues. The Tenants amended their Application on May 24, 2016 to increase their monetary claim.

Preliminary Issues

One of the Tenants appeared for the hearing with his agent who also acted as his translator. The Tenant provided affirmed testimony through his agent translator. There was no appearance for the Landlords named on the Tenants’ Application during the 45 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenants for this hearing.

The Tenant testified that he had served a copy of the Application and the Notice of Hearing documents to the Landlords by registered mail on May 20, 2016. The amended Application was served on June 1, 2016 by registered mail. The documents were served to the Landlord’s service address as detailed on the tenancy agreement provided into evidence. The Tenant provided the Canada Post tracking numbers into evidence to verify this method of service; these are noted on the front page of this Decision respectively. The Tenant testified that the Canada Post website shows that an agent for the corporate Landlord signed for and received the documents on May 24, 2016 and June 2, 2016 respectively.

In the absence of the Landlords named on the Tenants’ Application to dispute the evidence before me, I accept the Tenant’s evidence that the Landlords were served with

the required documents for this hearing pursuant to Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Tenant.

During the hearing, the Tenant agent asked to withdraw the Tenants' monetary claim and only deal with the issue of the payment the Tenants had made for utilities in the amount of \$219.25. The Tenant's agent explained that the Tenants were new to the country at the time of this tenancy and did not understand all of their rights and obligations and what they were eligible to claim from the Landlords in respect to this dispute. The Tenant's agent stated that she needed more time with both Tenants to consult on the remainder of their monetary claim and decide whether or not they should pursue it against the Landlords. Under these circumstances, I accepted that the Tenants needed more time and access to further advice and advocacy. Therefore, I allowed the Tenant to withdraw the monetary claim and I only dealt with the issue of the utilities in this tenancy as follows.

Issue(s) to be Decided

Are the Tenants entitled to the return of a utility payment for this tenancy which they were not entitled to pay?

Background and Evidence

The Tenant testified that the parties signed a written tenancy agreement on October 18, 2016 for a tenancy to start on November 1, 2013. However, the rental unit was not provided to the Tenants for occupancy until December 1, 2016 which was the date the tenancy started. The tenancy agreement was for a fixed term of three months which then continued on a month to month basis. Rent in the amount of \$1,300.00 was payable by the Tenants on the first day of each month. A security deposit of \$650.00 was paid on October 18, 2013.

The Tenant referred me to the first copy of the tenancy agreement which he had provided into evidence. That tenancy agreement, which only shows the Landlord's agent's signature on the last page, indicates that all the utilities for the tenancy are included in the rent with no cap. The Tenant testified that he agreed to these terms with the understanding that he did not have to make any utility payments during the tenancy and as a result he signed the last page of the agreement which contained the Landlord's agent's signature. After the tenancy started, pursuant to the signed agreement, no request for utility payment was made by the Landlord. However, due to several reasons the tenancy ended on September 30, 2015.

The Tenant testified that shortly before the tenancy ended, he was presented with a utility payment letter asking them to pay \$219.25 for unpaid utilities. The Tenants provided a copy of this letter into evidence.

The Tenant testified that the Landlord also presented him at this time with a second copy of the signed tenancy agreement which the Landlord had changed to include a cap of \$20.00 for hydro in the utilities section of the agreement. The Tenant submitted that the Landlord had changed the agreement and had added the signed page of the first agreement the Tenants had signed to the second copy the Landlord generated to give the impression that they had agreed to the \$20.00 utility cap. The Tenant testified that no such agreement was made.

The Tenants, not knowing their rights and obligations under the Act, made the utility payment. However, after the Tenant consulted with an advocate and examined the copies of the tenancy agreement provided to them by the Landlord, he realised that he should not have made this payment pursuant to the original agreement he signed which required no payment of utilities. As a result, the Tenants seek to recover the amount of \$219.25 paid by them from the Landlords in this Application.

Analysis

I have considered the undisputed evidence of the Tenant before me on the balance of probabilities. As a result, I accept the Tenant's oral and documentary evidence that the tenancy agreement the Tenants entered into with the Landlord did not require them to pay utilities for this tenancy.

Section 14 of the Act prohibits a unilateral change to a tenancy agreement. Therefore, I find the Tenants are entitled to the return of the utility payment they made in the amount of \$219.25.

As the Tenants have been successful in this Application and had to make the Application to recover this amount, and the Landlords failed to appear for this hearing, I also award the \$100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenants is \$319.25. The Tenants are issued with a Monetary Order for this amount which the Landlords must pay the Tenants. If the Landlords fail to do so the Tenants may enforce the Monetary Order through the Small Claims Division of the Provincial Court as an order of that court. Copies of the Monetary Order are attached to the Tenants' copy of this Decision.

Conclusion

The Tenants' Application for the return of a utility payment of \$219.25 made during the tenancy is granted along with the recovery of the \$100.00 filing fee. The Tenant's remaining monetary claim is dismissed with leave to re-apply. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 16, 2016

Residential Tenancy Branch