



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, ERP, RP, LRE, MNRT, OLC, PSF, RR

Introduction

This hearing was convened in response to an application made June 20, 2018 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for a total monetary amount of \$474.58 and Orders as follows:

1. An Order allowing access to the unit for the Tenant or the Tenant’s guests - Section 70;
2. An Order for emergency and other repairs - Section 32;
3. An Order suspending or setting conditions on the Landlord’s right of entry - Section 70;
4. An Order for the Landlord’s compliance with the tenancy agreement or Act - Section 62;
5. An Order for the provision of facilities or services - Section 65;
6. An Order for a rent reduction - Section 65;
7. A Monetary Order for the costs of emergency repairs - Section 67; and
8. A Monetary Order for compensation - Section 67.

On June 21, 2018 the Tenant made an amendment to the application to increase the monetary amount to \$674.50. The amendment does not include any details related to this increase nor does it attach a monetary order worksheet identifying the claim or reason for the increased amount.

On July 26, 2018 the Tenant made a further amendment to the application to increase the monetary amount to \$1,277.04. The Tenant attaches a monetary order worksheet for this amount with submissions setting out the detail of the claims in the worksheet.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary matters

The Parties confirm that the Tenant moved out of the unit and returned the keys on June 30, 2018. As the claims contained in the original application for guest access, repairs to the unit, landlord's right of entry, landlord's compliance, the provision of facilities or services and the rent reduction are only relevant to an ongoing tenancy I dismiss these claims.

Section 59(2)(b) of the Act provides that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. This section reflects the legal principle that a person facing a claim is entitled to know the details of the claim in order to be able to respond to the claim. As the first amendment to the application does not include any particulars, such as details of the claim or a monetary order worksheet, I find that the amendment does not comply with the Act and I dismiss this claim.

The original application with the remaining claims for compensation are detailed in the original application as costs incurred during the tenancy for emergency repairs by the Tenant and for costs in relation to utilities. The second amendment was made after the Tenant moved out of the unit and contains costs related to that move and new costs that are described by an attached submission as costs for "mental distress due to continuing harassment".

Rule 2.3 of the RTB Rules of Procedure provides that claims in an application must be related to each other. As the monetary amounts in the second application are costs associated with the ending of the tenancy and harassment and as these claims are not related to utility or repair costs I find that the claims in the second amendment are not related to the monetary claims made in the original application and I dismiss these

claims with leave to reapply. The result of these findings leaves only the claim for \$154.58 in relation to utilities and the claim of \$20.00 for emergency repairs.

Issue(s) to be Decided

Is the Tenant entitled to costs for emergency repairs?

Is the Tenant entitled to costs for utilities?

Background and Evidence

The following are agreed or undisputed facts: The tenancy, under written agreement, of a separate suite in a house occupied by the Landlord, started April 15, 2018 on a fixed term to end October 31, 2018. Rent of \$1,275.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$637.50 as a security deposit.

The Tenant states that after signing the initial tenancy agreement without any addendum the Landlord gave them a photocopy of the tenancy agreement and an addendum that that Tenant states it had not signed. The Tenant states that the addendum required the Tenants to pay 50% of the total utility costs. The Tenant states that did not and would not have agreed to assume 50% of the hydro costs because they only occupy a small percentage of the whole house that is occupied by the Landlord. The Tenant states that the Landlord has 4 persons in their residence while the Tenant only had 2 persons in its residence. The Tenant claims return of \$154.50 paid to the Landlord for hydro usage for the period April 15 to May 31, 2018.

The Landlord submits that the Tenant did agree to pay 50% of the hydro. The Landlord states that the suite is approximately 25% of the entire house. The Landlord states that they had to assign a greater percentage of the hydro usage to the suite in order to meet the Landlord's own costs of living.

In the interests of saving time and costs of the hearing the Landlord does not dispute the Tenant's claim of **\$20.00** for emergency repairs.

Analysis

Section 6(3)(b) of the Act provides that a term of a tenancy agreement is not enforceable if, inter alia, the term is unconscionable. Section 3 of the Residential Tenancy Branch Regulations provides that for the purposes of section 6 (3) (b) of the Act, a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party. Given the undisputed evidence of the significant differences between the size and number of occupants in the suite and the Landlord's residence I find that the 50% apportionment of hydro does not reflect actual or even a reasonable apportionment of hydro usage by the Tenants and that in effect the tenancy agreement requires the Tenants to pay for the Landlord's hydro usage. I consider this to be grossly unfair to the Tenants. I find therefore that the requirement to pay 50% of the hydro is unconscionable and therefore unenforceable. The Tenant is entitled to recovery of the hydro paid in the amount of **\$154.58**. As the Landlord does not dispute the claim of **\$20.00** I find that the Tenant has substantiated a total entitlement of **\$174.58**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$174.58**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: August 16, 2018

Residential Tenancy Branch