



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to have the terms of her tenancy agreement defined.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

At the outset of the hearing the tenant submitted that she had attempted to amend her Application when she brought in her evidence to include an issue of laundry and storage access but was told she did not need to amend the Application because the issue could be covered under her request to have the landlord comply with the *Act*, regulation and tenancy agreement.

The landlord had submitted evidence that was in response to this additional issue and despite indicating that she had not read through all of the material I continued the hearing on the proviso that if it became necessary to adjourn the hearing on this matter I would consider an adjournment at that time. There was no need to adjourn the hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to change the terms of the tenancy agreement regarding her hydro contributions; to an order to have the landlord comply with the provision of access to laundry and storage facilities; to recover the filing fee from the landlord, pursuant to Section 14, 27, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on October 16, 2012 for a month to month tenancy beginning on December 1, 2012 with a monthly rent of \$735.00 due on the 1st of each month with a security deposit of \$367.50 paid.

The tenancy agreement stipulates that the tenant will be responsible for 40% of the hydro charges and that after 4 months into the tenancy the parties will re-negotiate the hydro portions. The tenant confirmed they have not negotiated new hydro obligations.

The tenant submits that when she was originally negotiating the tenancy agreement with the landlord that the landlord had originally wanted a 50/50 split on the hydro costs. The tenant submits the landlord offered to show her hydro bills from 2010 and 2011 but refused to show her the bills for 2012 indicating that the previous tenant had used a lot of electricity. The tenant wishes to have the hydro portions to be more in line with the respective proportions of each of the two homes on the residential property.

The tenant also submits that after she served the landlord with the hearing documents for this hearing the landlord advised her that she would be changing the access code to the storage and laundry area and that she would not be providing the tenant with the code but rather the tenant would need to contact the landlord anytime she wanted to do laundry (on previously agreed upon days) or to the storage at reasonable times.

The landlord testified that she had been uncertain how a bag of garbage/recycling had gotten into the locked area with no sign of a break in so she decided that she must change the access code and that she would not give anyone else the access code. The landlord also stated there is an alarm system that she activates when she is not on the property. The landlord testified that she has not and does not now intend to change the access code.

The parties agree that they had agreed to the tenant being able to access the laundry on Wednesdays between 12:00 noon and 7:00 p.m.; Thursdays between 4:00 and 9:00 p.m.; and Sundays between 1:00 and 9:00 p.m. The landlord also submits that the tenant can have access to the storage area during these times or if the tenant calls the landlord at any reasonable time outside of these times.

Analysis

Section 14(2) of the *Act* stipulates that a tenancy agreement may be amended to add, remove, or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. Section 14(3) states that 14(2) does not apply if the change is a rent increase in accordance with the *Act*; a withdrawal or restriction of a service or facility in accordance with Section 27; or a term that a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

The role of an Arbitrator in a dispute resolution proceeding is to ensure that both parties comply with their respective obligations and receive their respective entitlements under the *Act*, regulation and/or tenancy agreement. The role is not to establish the terms of the tenancy agreement.

In the case before me, the parties have entered into a tenancy agreement that stipulates the tenant is responsible for 40% of the hydro costs and that each side agreed to re-negotiate this amount after a 4 month period. Failure on the part of either party to re-negotiate this amount in good faith may be considered a violation of the tenancy agreement.

I find, from the submissions before me and in regard to the determination of the proportion of hydro that the tenant should be responsible, that there is currently no violation of the *Act*, regulation or tenancy agreement and I dismiss this portion of the tenant's Application.

As to the tenant's request to have the landlord provide access to storage and laundry, while I accept that the landlord has not changed the access code to the basement area I order that she not do so during this tenancy, unless she provides an updated code for the tenant to access both the laundry and storage facilities. I also order that there be no changes in the times the tenant is entitled to access the laundry (as outlined above) unless mutually agreed upon or in compliance with provisions in the *Act*.

While it is a common practice, in shared accommodation situations, to have laundry facilities available on a scheduled basis, I find that to restrict access to stored personal property is not a reasonable or common practice.

As such, I order the landlord make available to the tenant access to her belongings in storage at any time requested, either through providing the tenant the alarm code so she may access the storage area on her own or by ensuring that either the landlord or

her agent disarms the alarm system at any time requested by the tenant. Failure to provide the tenant with this access may constitute a violation of the tenancy agreement.

I also caution that the landlord that she must not make unilateral changes to any use of the property (impacting the tenant) or the terms of the tenancy agreement. If the landlord wishes to change any of these items she must either have agreement by the tenant, in writing, or have authority to make the change under the *Act*.

Conclusion

As the tenant was partially successful in her Application I find she is entitled to monetary compensation pursuant to Section 67 in the amount of **\$25.00** comprised of half of the \$50.00 fee paid by the tenant for this application.

I order the tenant may deduct this amount from her next rent payment in accordance with Section 72(2)(a).

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 07, 2013

Residential Tenancy Branch

