



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The parties executed a written tenancy agreement for a tenancy set to commence May 1, 2012. The tenancy agreement provides that the tenants would pay rent of \$1,950.00 per month and included in that rent were services and facilities of: "house hydro and lawn and garden maintenance" and garbage collection (herein referred to as the "common costs"), among other things. The rental unit is one of five suites located on the property. The tenants were required to pay their own hydro account for service to their suite.

The tenant submitted that the advertisement for the rental unit they responded to indicated the monthly rent was \$1,895.00 per month. After several exchanges via email the landlord required the tenants to pay \$1,950.00 per month with the inclusion of the common costs. The tenants agreed to pay \$1,950.00 per month and did so for the remainder of their tenancy which ended on October 31, 2013. After the tenancy ended the tenant requested the landlord provide her with copies of bills for the common costs. The landlord provided the tenant with a few of the bills. The tenant calculated that 1/5 of the bills she was provided amounted to \$77.40 but since the tenants paid \$990.00

[\$55.00 x 18 months] toward common costs during their tenancy the tenant is of the position she overpaid \$912.60. The tenant is seeking to recover that amount from the landlord by way of this application.

The tenant provided several emails written between the parties, and/or their relocation specialist, in April 2012 as evidence the rental unit was advertised for \$1,895.00 per month.

The landlord submitted that the negotiation of this tenancy took a couple of months and that there were many more emails exchanged but not provided in the tenant's evidence package. The landlord was of the position the parties negotiated a monthly rent of \$1,950.00 with the inclusion of the common costs as, he understood, the tenants were apprehensive about other costs being payable by them so he included those costs and the rent was negotiated accordingly.

Both parties provided consistent testimony that the tenants did not pay any amounts for common costs in addition to the monthly rent of \$1,950.00. Although I was not provided a copy of the entire tenancy agreement, both parties agreed that the tenancy agreement was executed by all parties.

Analysis

Under the Act, landlords are required to prepare a written tenancy agreement and provide a copy to the tenant. The Act requires that every written tenancy agreement include certain terms, including: the amount of the monthly rent and the services or facilities included in that rent. The written tenancy agreement, as with any contract, reflects the terms both parties agreed upon when the tenancy or contract formed.

Section 91 of the Act provides that the common law applies to landlords and tenants unless modified or varied under the Act. Under the Parol Evidence Rule of contract law, where the language of a written contract is clear and unambiguous, then no extrinsic parol evidence (written or oral) may be admitted to alter, vary or interpret in any way the words that are written in the agreement. When there is no ambiguity in a written contract it must be given its literal meaning. Words must be given their plain, ordinary meaning unless to do so would result in an absurdity.

The Parol Evidence Rule prevents a party to a written contract from presenting extrinsic evidence that contradicts or adds to the written terms of the contract that appear to be whole. The rationale for this rule is that since the contracting parties have reduced their agreement to a final written agreement, extrinsic evidence should not be considered

when interpreting the written terms, as the parties had decided to ultimately leave them out of the contract. In other words, one may not use evidence made prior to the written contract to contradict the writing.

In this case, the landlord prepared a tenancy agreement using the form published by the Residential Tenancy Branch and the parties executed the written document. The tenancy agreement provides that the monthly rent was \$1,950.00 and that included in that rent was "house hydro and lawn and garden maintenance, and garbage" among other things. It was undisputed that the tenants did not pay the landlord for the above described common costs in addition to the monthly rent payment of \$1,950.00.

I find the tenancy agreement, as it is written, clearly describes the amount of the monthly rent and what services or facilities are included in that monthly rent and that there is no ambiguity in the wording. In the absence of any ambiguity I find it unnecessary and inappropriate to turn to the tenant's extrinsic evidence (the emails and oral testimony) to interpret, vary or alter the terms of the written tenancy agreement.

In light of the above, I find the payment of \$1,950.00 per month was required of the tenants under the Act and the tenancy agreement and collecting \$1,950.00 per month was not a violation of the Act, regulations or tenancy agreement by the landlord. Therefore, I dismiss the tenant's application against the landlord.

Conclusion

The tenant's application has been dismissed.

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: April 16, 2014

Residential Tenancy Branch

