



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OLC, O, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, or the tenancy agreement; for “other”; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on, or about, February 29, 2016 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application were sent to the Landlords, via registered mail. The male Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that approximately three weeks ago she submitted 10 or 12 additional pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlords. As it was not served to the Landlords, it was not accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is there a need to issue Orders in regards to this tenancy?

Background and Evidence:

The Landlords and the Tenant agree that:

- this tenancy began on September 01, 2015;
- prior to the tenancy beginning the Tenant agreed to pay monthly rent of \$1,200.00 by the first day of each month;

- the Tenant lives in the lower portion of the residential complex and the Landlords live in the upper portion;
- the upper portion of the residential complex is larger than the Tenant's rental unit;
- there are currently three people occupying the upper portion of the residential complex and two people occupying the rental unit;
- the parties signed a tenancy agreement, which was not submitted in evidence;
- the tenancy agreement declares that utilities will be shared but the details of the cost sharing are not specified;
- the parties did not discuss how the utilities would be shared prior to the start of the tenancy; and
- sometime in January or February of 2016 the Tenant was informed that she would be required to pay 100% of the utility bills for September of 2015 and 40% of the utility bills.

The Tenant is seeking a determination of how much she is required to pay for utilities. She stated that she is willing to pay 20% of the utility bills but she believes that 40% is unfair. The Landlords believe that 40% is fair.

The Tenant is seeking an Order requiring the Landlord to provide her with a key to their shared mail box, which is a Canada Post community mail box.

The Tenant stated that when the tenancy began she was aware that her mail would be delivered to a community mail box and that she was advised that she would be provided with a key to the mail box. She stated that she has never been provided with a key and she relies on the Landlords to deliver her mail to her.

The male Tenant stated that when the tenancy began he told the Tenant he would provide her with a key to the community mail box "if possible" and that he has not done so because he has to pay for a duplicate key.

Analysis:

Section 6(3)(c) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. On the basis of the undisputed testimony, I find that the tenancy agreement does not clearly communicate the portion of the utility bills the Tenant will be required to pay.

The court held in *Derby Holdings Ltd. V. Walcorp Investments Ltd.* 1986, 47 Sask R. 70 and *Coronet Realty Development Ltd. And Aztec Properties Company Ltd. V. Swift*, (1982) 36 A.R. 193, that where there is ambiguity in the terms of an agreement prepared by a landlord, the contra proferentem rule applies and the agreement must be interpreted in favour of the tenant. I find the contra proferentem rule applies here and that the agreement must, therefore, be interpreted in a manner that benefits the Tenant. As the Tenant indicated that she is willing to pay 20% of the utility bills, I find that she

must pay 20% of the utility costs incurred during her tenancy. As the Landlords did not clarify the cost sharing prior to the start of the tenancy, I find that they no longer have the right to determine the details of the cost sharing.

To provide further clarity to this tenancy, I find that the Tenant is not obligated to pay any portion of a utility bill until she is provided with a legible copy of the bill.

In the event the Tenant has paid more than 20% of any utility bill at any point during the tenancy and has not yet recovered the overpayment, I authorize her to recover any overpayment by deducting the overpayment from rent that is due.

On the basis of the testimony of the male Tenant, I find that when this tenancy began the Tenant was informed that she would be provided with a key to the community mail box, "if possible". As this was a promise made to the Tenant at the start of the tenancy I find that the Landlords are obligated to comply with the promise, even if it is expensive to obtain a second key. As the male Landlord acknowledged that it is possible to get a second key to the community mail box from Canada Post, I find that the Landlords are obligated to provide the Tenant with a key, regardless of the cost.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application. I therefore authorize the Tenant to reduce one monthly rent payment by \$100.00 in compensation for the fee paid for filing this Application for Dispute Resolution.

Conclusion:

In the event the Landlords have not provided the Tenant with a key to the community mail box by May 15, 2016, I authorize the Tenant to reduce her rent payment for June for 2016 by \$25.00. I authorize the Tenant to reduce each subsequently monthly payment by \$25.00 on the first day of each month until such time as she receives a key to the mail box.

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 14, 2016

Residential Tenancy Branch