



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDCT, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to dispute a rent increase as well as compensation for money owed or damage or loss under the Act, regulation or tenancy agreement, an order for the Landlord to comply with the Act, regulation or tenancy agreement, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s advocate (the “Advocate”), and the Landlord, all of whom provided affirmed testimony. An advocate in training was also in attendance and with the agreement of all parties, was allowed to remain in the hearing in a non-participatory capacity. The Tenant, the Advocate and the Landlord were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all documentary evidence and testimony before me that was accepted for consideration in these matters in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

In the Application the Tenant sought multiple remedies under multiple sections of the Act, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and

that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Based on the Testimony of the Tenant and the Advocate, I find that the priority claims relate to compensation for money owed or damage or loss under the *Act*, regulation or tenancy agreement, and an order for the Landlord to comply with the *Act*, regulation or tenancy agreement. As a result I exercise my discretion to dismiss the Tenants unrelated claim disputing a rent increase with leave to reapply.

Preliminary Matter #2

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Tenant entitled to an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement?

Is the Tenant entitled to compensation for money owed or damage or loss under the *Act*, regulation or tenancy agreement and recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed September 20, 2013, states that the month-to-month tenancy began on October 8, 2013, and that rent in the amount of \$630.00 is due on the first day of each month. Under section three on page two of the tenancy agreement; it states that the only things included in the cost of rent are a stove, an oven, and a refrigerator. Section one of the attached addendum to the tenancy agreement, also signed September 20, 2018, states that rent in the amount of \$630.00 is due on the first day of each month, plus utilities.

The parties agreed that a typed document was served on the Tenant by the Landlord in June of 2014, a copy of which is before me for consideration, stating that effective October 1, 2014; the Tenant is obligated to pay \$200.00 towards utilities each month.

Although the Tenant testified that she never agreed to this unilateral change in her tenancy agreement, both parties agreed that this amount is for water, sewer, and garbage and that the Tenant has paid this amount each month since October of 2014. The parties also agreed that the Tenant pays her own heat and electricity bills, which are in her name.

The Tenant and the Advocate argued that section one of the addendum to the tenancy agreement requiring the Tenant to pay \$630.00 in rent "plus utilities" each month is so vague that it ought to be unenforceable as it does not clearly communicate the rights and obligations under it. Specifically they stated that it does not contain any information about which utilities the Tenant is to pay and whether she is to pay a set amount or the actual cost. In any event, the Tenant and the Advocate also submitted that should it be enforceable, the Tenant should only be required to pay the actual cost of utilities, not the \$200.00 a month arbitrarily charged by the Landlord starting October 1, 2014. As a result of the above, the Tenant sought \$4,088.90 in compensation which she stated is the difference between the amount paid by her for utilities since October 1, 2014, and the amount actually payable to the city for garbage, water, and sewer since that date.

The Landlord disputed that the Tenant is entitled to reimbursement for any utilities paid. The Landlord testified that the tenancy agreement clearly shows that utilities are not included and that the addendum requires the Tenant to pay for utilities in addition to rent. The Landlord stated that she did not in fact charge the Tenant any utilities until October of 2014, at which point she required the Tenant to start paying \$200.00 per month towards for garbage, water, and sewer per month.

The Landlord stated that the \$200.00 charged per month was based on an estimate of what the actual utility costs would be as she only purchased the property shortly before the tenancy agreement was signed. She also recognized that this amount is slightly higher than the actual cost of these services; however, she stated that the Tenant's rent is well below market value and therefore the Tenant is already paying less per month for rent and utilities than she might receive from another Tenant or that the Tenant otherwise might pay elsewhere. Further to this, the Landlord stated that the Tenant has been paying this amount since October 1, 2014, and therefore it is unreasonable for her to argue that she never agreed to pay this amount.

Both parties submitted significant amounts of documentary evidence to support their positions including but not limited to copies of utility bills, detailed calculations of amounts owed and paid, copies of the tenancy agreement and addendum, and written submissions.

Analysis

While the Tenant and the Advocate argued that the requirement in the addendum for the Tenant to pay utilities in addition to rent is so ambiguous that it is therefore unenforceable, I do not agree. I acknowledge that the addendum does not specify which utilities are to be paid by the Tenant. However, as the addendum forms part of the overall tenancy agreement, I find that the tenancy agreement itself must also be considered when interpreting the addendum. As stated above, the tenancy agreement explicitly states that the only things included in the cost of rent are a stove, an oven, and a refrigerator. As section three of the tenancy agreement allows the parties to select that water, electricity, heat, and garbage collection, among other things, are included in the cost of rent, I find the fact that these utilities were not selected as covered by the rent in the tenancy agreement persuasive evidence that they are not included. As a result, I find that a common sense interpretation of the addendum requiring the Tenant to pay utilities means that she is therefore required to pay for these services herself. Based on the above, I therefore dismiss the Tenant's claim that section one of the addendum is unenforceable without leave to reapply.

Having made the above finding, I will not turn my mind to the amount owed each month for utilities and the Tenant's claim for reimbursement of \$4,088.90 in utilities paid. Both parties agreed that the Tenant was served written notice in June of 2014, that effective October 1, 2014, \$200.00 would be due from the Tenant on the first day of each month for the cost of utilities. Although the Tenant argued that she never agreed to this this unilateral change to her tenancy agreement, she acknowledged paying this amount each month since October 1, 2014; which is over three and a half years from the date of the Tenant's Application and almost four years from the date of the hearing.

Section 14 of the *Act* states that a tenancy agreement may only be amended to add, remove or change a term, other than a standard term, if both the landlord and tenant agree to the amendment. However, Section 7(2) of the *Act* and Residential Tenancy Branch Policy Guideline (the "Policy Guideline") #5 states that where the landlord or tenant breaches a term of the tenancy agreement or the *Act*, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss and that the applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

Although the Tenant argued that she never agreed that \$200.00 per month was to be paid for utilities as this is not the actual cost of the utilities due for the rental unit, this

argument is in direct contradiction with her own actions over the last four years. Based on the fact that the Tenant paid the \$200.00 per month requested by the Landlord for utilities as requested starting October 1, 2014, and has been paying this amount each month since that time, I find that the Tenant, by way of her own actions, agreed to this change in the tenancy agreement. As a result, I find that the parties agreed, pursuant to section 14 of the *Act*, that \$200.00 would be due on the first day of each month for garbage, water, and sewer, in addition to the rent owed.

In any event, even if I accepted the Tenant's argument that she did not agree to pay this amount, I find that the Tenant failed to mitigate any potential loss when she waited three and a half years to file her Application seeking to dispute this matter. I find the Tenant's failure to mitigate her loss, pursuant to section 7(2) of the *Act* and Policy Guideline #5 is both detrimental to her claim, and prejudicial to the Landlord. Ultimately I find that the Tenant could reasonably have avoided this loss by exercising due diligence with regards to her rights under the *Act*.

As a result of the above findings, I therefore dismiss the Tenant's claim for reimbursement of \$4,088.90 in utilities paid and an order for the Landlord to comply with the *Act*, regulation or tenancy agreement without leave to reapply. As the Tenant was unsuccessful in her Application, I also decline to grant her recovery of the filing fee.

Conclusion

The Tenants Application seeking compensation for money owed or damage or loss under the *Act*, regulation or tenancy agreement, an order for the Landlord to comply with the *Act*, regulation or tenancy agreement, and recovery of the filing fee is dismissed without leave to reapply.

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: July 13, 2018

Residential Tenancy Branch