



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RR, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for the application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The phone lines were left open for the party to call in to the teleconference for the full duration of the hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they served the landlord with their application for dispute resolution dated July 12, 2018 and evidence on July 17, 2018. The tenant orally provided a Canada Post tracking number as evidence of service. Based on the undisputed evidence I find that the landlord was deemed served with the tenant's application package on July 22, 2018 five days after mailing in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing, the tenant made an application requesting to amend the monetary amount of the claim sought. The tenant indicated that the application contains a typographic error and the actual amount being sought is \$875.00. Pursuant

to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as fixing a typographic error is reasonably foreseeable, I allow the tenant to amend their application to increase the monetary claim from \$850.00 to \$875.00.

Issue(s) to be Decided

Should the landlord be ordered to comply? Is the tenant entitled to reduce rent? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave undisputed evidence regarding the following facts. This periodic tenancy began in June, 2016. The current monthly rent is \$1,730.00 payable on the first of each month. The tenant continues to reside in the rental unit.

The named landlord is the former owner of the rental property. On or about May 9, 2018 the landlord issued the tenant a letter advising them that the property was going to be listed for sale. The landlord gave the tenant notice of showing times and requested that the tenant cooperate with the sale of the property. The landlord stated that “In consideration of the inconvenience and in exchange for your full co-operation I’ll rebate \$875.00 (approximately half a month’s rent) if the property sells.” A copy of the letter signed by the landlord was submitted into written evidence.

The tenant testified that they became aware that the property sold in August, 2018 when they were contacted by new property managers. The tenant said that they were never issued the rebate as promised in the letter and have paid the full monthly rent each month of the tenancy. The tenant submits that they are seeking the landlord comply by paying the \$875.00 amount. The tenant said they had initially sought to recover the monetary award by reducing their rent but as there are new property owners who have not been served with the present application, they feel this would not be a practical solution.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it

stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that the tenant has proven, on a balance of probabilities, that there was an agreement with the landlord where the landlord was to rebate them \$875.00 after the sale of the rental property. I accept the tenant's evidence that they were never issued the rebate and they paid the full monthly rent each month of the tenancy. I therefore find that the tenant is entitled to a monetary award in the amount of \$875.00 arising from their agreement with the landlord which has not yet been honored.

As the tenant's application was successful the tenant may also recover the filing fee for their application.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$975.00.

The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: September 10, 2018

Residential Tenancy Branch