



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord was personally served with the notice of dispute resolution package on August 06, 2018. I find that the landlord was served with this package on August 06, 2018, in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2018 and ended on August 31, 2018. Monthly rent in the amount of \$1,700.00 was payable on the first day of each month. A security deposit of \$850.00 was paid by the tenant to the landlord. The landlord returned the security deposit to the tenant after she moved out. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenancy agreement makes no reference to an increased rental rate for additional occupants.

Both parties agree to the following facts. In April of 2018 the tenant's boyfriend stayed at the subject rental property. The landlord asked the tenant to pay \$10.00 per day that her boyfriend stayed at the subject rental property for a total of \$300.00, the tenant paid the landlord \$300.00. The landlord then asked the tenant to pay \$30.00 per day that the tenant's boyfriend stayed at the rental property in May of 2018. The tenant's boyfriend stayed 4 nights and the tenant paid the landlord \$120.00.

The tenant testified that she did not want to pay the landlord for her boyfriend to stay at the subject rental property, but she felt like she didn't have an option. The tenant testified that after informing herself of the terms of her tenancy agreement she is now seeking the return of the money she paid to have her boyfriend stay at the subject rental property. The tenant, in her written submissions noted that section 11 of the tenancy agreement states:

"The landlord must not impose restriction on guests and must not require or accept any extra charge for daytime visits or overnight guests."

The landlord testified that the tenancy agreement includes heat and hot water and furniture. The landlord testified that since the boyfriend was staying at the subject rental property for all of April 2018, the electricity bills went up with the added consumption and that she was right to ask the tenant to pay a higher rent.

Analysis

Section 13(2)(f)(iv) states that a tenancy agreement must comply with any requirements prescribed in the regulations and must set out the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies.

The tenancy agreement states that rent in the amount of \$1,700.00 is payable on the first day of every month. The tenancy agreement does not state that rent varies with the number of occupants.

Section 30(1) of the *Act* states that a landlord must not unreasonably restrict access to residential property by:

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

Section 11 of the tenancy agreement states “The landlord must not impose restriction on guests and must not require or accept any extra charge for daytime visits or overnight guests.”

While landlords and tenants may enter into an agreement for increased rent for an additional occupant, I find that the landlord did not make an agreement to increase the monthly rate by a set amount for an additional occupant but charged the tenant a fee for having a guest stay over on a per diem basis. I find that charging the tenant on a per diem basis for the nights her boyfriend stayed over breached section 11 of the tenancy agreement. I find that charging a per diem rate served to unreasonably restrict access to the tenant’s residential property by a person permitted on the residential property by the tenant, contrary to section 30(1)(b) of the *Act*.

In addition, I find that the tenancy agreement does not set out how the rental rate will vary for an additional occupant. The provisions of the tenancy agreement do not support the landlord’s position that the charges she levied against the tenant were for an additional occupant, rather than a fee for a guest’s overnight stay.

Based on the above, I find that the tenant is entitled to the return of \$420.00 that the landlord charged her for the nights her boyfriend stayed over.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$520.00.

The tenant is provided with this Order in the above terms and 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: December 05, 2018

Residential Tenancy Branch