



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order allowing access to the unit - Section 30; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. Shortly after the onset of the hearing the Parties reached a settlement agreement to resolve the claim for the order allowing access. The claim for recovery of the filing fee is set out below the agreement.

Agreed Facts

The tenancy began in 2013. Rent of \$914.45 is payable in advance on the first day of each month. The Tenant is moving out of the unit and will return the keys to the Landlord at 1:00 p.m. on April 30, 2018

Settlement Agreement

The Parties mutually agree as follows:

- 1. The Landlord will provide the Tenant with unrestricted access to and from her unit until the tenancy has ended; and**
- 2. These terms comprise the full and final settlement of all aspects of this dispute for both Parties.**

Section 63 of the Act provides that if the parties settle their dispute during dispute resolution proceedings, the settlement may be recorded in the form of a decision or order. Given the mutual agreement reached during the Hearing, I find that the Parties have settled their dispute as recorded above. In order to give effect to the mutual agreement I order the Landlord to ensure that the Tenant has unrestricted access to and from the unit. I consider that the agreement on access implicitly includes any agents, such as a moving truck, or guests of the Tenant.

Remaining Issue

Is the Tenant entitled to recovery of the filing fee?

Background

Prior to reaching the mutual agreement the Tenant stated that although the Tenant's lack of access is no longer an issue due to snow the Landlord is attempting to restrict the Tenant's access to the unit for her moving truck. The Landlord states that the truck must drive up the driveway to the unit backwards as otherwise the truck will not be able to turn around to leave.

The Tenant states that prior to making the application for dispute resolution the Landlord had restricted the Tenant's access to the unit by failing to clear the unit driveway of snow for 5 days. The Landlord states that while the driveway could not be used by vehicles due to the snow there was a pathway for a person to walk up the 300 foot driveway. The Landlord states that the driveway was cleared on the 4th day.

Analysis

Section 72(1) of the Act provides that a party may be ordered to repay a filing fee to the other party. While I consider the Landlord's evidence of telling the Tenant that her moving truck has to drive up backwards to possibly be good advice, it may also possibly be considered an effort to frustrate the Tenant's access. Given the undisputed

evidence that the driveway only provided a walking path at the time of the application I find on a balance of probabilities that the Tenant's application had some merit. For these reasons and as the Parties reached a mutual agreement on access I find that the Tenant is entitled to recovery of half the \$100.00 filing fee in the amount of **\$50.00**.

Conclusion

The Parties have reached a settlement agreement.

I grant the Tenant an order under Section 67 of the Act for **\$50.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 18, 2019

Residential Tenancy Branch