



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NVISION PROPERTY MANAGEMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, PSF, RR, MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on March 12, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord comply with the Act, regulation, or tenancy agreement;
- an order that the Landlord provide a service required by the tenancy agreement or law;
- an order for regular repairs;
- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord's Agent K.P. attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord by registered mail on March 15, 2019. The Tenant stated that she sent additional evidence to the Landlord by registered mail on April 13, 2019. K.P. confirmed receipt of both mailings. K.P. testified that he served the Tenant with his documentary evidence by regular mail on April 9, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written

evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the *Act*, regulation, or tenancy agreement, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to an order that the Landlord provide a service required by the tenancy agreement or law, pursuant to Section 62 of the *Act*?
3. Is the Tenant entitled to an order for regular repairs, pursuant to Section 32 and 62 of the *Act*?
4. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
5. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on March 1, 2013. Currently, rent in the amount of \$911.00 is due to the Landlord each month. The Tenant paid a security deposit in the amount of \$412.50 which the Landlord continues to hold. The Tenant provided a copy of the tenancy agreement in support.

The parties testified and agreed that the Landlord served the Tenant with a Notice Terminating or Restricting a Service or Facility on July 6, 2017 (the "Notice"). The Notice informed the Tenant that the Landlord would be replacing the hot water heating system with new high efficiency baseboard heaters as of October 1, 2017. As the Tenant's heat had previously been included in the Tenant's rent, the Landlord indicated on the Notice that the Tenant's rent would be reduced by \$25.00 per month to compensate for the additional hydro consumption each month for heating.

The Tenant testified that prior to October 1, 2017 her average monthly hydro consumption had been \$20.00 a month. The Tenant provided two hydro bills, one dated January 22, 2019 in the amount of \$258.76 and the other dated November 22, 2018 in the amount of \$106.24 in support of her claim that she has not been adequately

compensated by the Landlord to support her heating costs. The Tenant is seeking compensation in the amount of \$146.00 for the heating costs.

K.P. testified that while the hydro bills may be higher than usual in the colder months, the Landlord has compensated the Tenant \$25.00 a month which equals out to be \$300.00 a year which adequately compensates the Tenant based on the average consumption report which the Landlord submitted into evidence.

The Tenant is also seeking that the Landlord comply with the tenancy agreement between the parties and provide the agreed upon service of including the heat in the Tenant's rent as stipulated in the tenancy agreement between the parties.

In response, K.P. testified that the Tenant does have heat in her rental unit and that while the conversion of heating methods has resulted in the Tenant having to incur higher hydro costs, K.P. stated that the Landlord has compensated the Tenant adequately as a result.

The Tenant is also stating that the hydro heating system is inadequate and does not give off enough heat to the rental unit. The Tenant also stated that the windows in her rental unit are older and she suspects that there is some heat loss as a result.

In response, K.P. testified that the high efficiency baseboard heaters installed in the Tenant's rental unit are more than adequate. The Landlord submitted an electrical engineer report in support.

If successful, the Tenant is also seeking the return of the \$100 filing fee paid for the Application.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

I accept that the parties agreed that the Landlord served the Tenant with a Notice Terminating or Restricting a Service or Facility on July 6, 2017. The Notice informed the Tenant that the Landlord would be replacing the hot water heating system with new high efficiency baseboard heaters as of October 1, 2017. As the Tenant's heat had previously been included in the Tenant's rent, the Landlord indicated on the Notice that the Tenant's rent would be reduced by \$25.00 per month to compensate for the additional hydro consumption each month for heating.

The Tenant is seeking monetary compensation in the amount \$146.00 relating to the increase in hydro costs as a result of the Landlord converting the hot water heating system to new baseboard heaters.

While the Tenant provided two hydro bills, I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord has not accurately compensated the Tenant for the additional hydro costs throughout the year. As such, I dismiss the Tenant's claim for \$146.00 without leave to reapply.

Section 27(2) reads as follows, "A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service of the facility.

The Tenant is seeking that the Landlord comply with the Act and tenancy agreement by providing heating at no additional charge, as stated in the tenancy agreement. Also the Tenant has applied for the Landlord to provide heat as a service outlined in the agreement.

After examining the terms of the tenancy agreement, the Act and having considered the evidence and testimony of both parties, I find that both parties agreed that the Landlord provided the Tenant with 30 days' written notice, in the approved form, of the termination of the hot water heating system and provided the Tenant with electrical baseboard heaters and reduced the rent in an amount that is equivalent to the increased costs associated with the additional hydro consumption required to use the new heaters.

The Tenant has provided insufficient evidence that the Landlord has not complied with the Act or Tenancy Agreement. I further find that the Landlord has provided heat as a service as stipulated in the tenancy agreement. As a result, I dismiss the Tenant's claims without leave to reapply.

Section 32 of the Act sets out the responsibility of a Landlord to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of a rental unit, make it suitable for occupation by a Tenant.

The Tenant is claiming that the new heating system is inadequate. The Tenant is seeking the Landlord make changes to the heating system to ensure that she is warm enough in the rental unit. The Landlord submitted an electrical engineer report which indicates that the heating system installed in the Tenant's rental unit is more than adequate. On a balance of probabilities, I find that it is more likely than not that the Landlord has installed a heating system that is adequate for the Tenant's rental unit. As such, I dismiss the Tenant claim without leave to reapply.

As the Tenant was unsuccessful with their Application, I find that they are not entitled to the return of their filing fee.

Conclusion

The Tenant has provided insufficient evidence to support her claims. As a result, the Tenant's Application 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: May 08, 2019

Residential Tenancy Branch