



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT OLC

Introduction

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

- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent CK (the "landlord").

As both parties were present service of documents was confirmed. The parties each testified that they were in receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlord provided the correct full legal name of the corporate landlord. Pursuant to section 64(3)(c) of the Act and Residential Tenancy Rule of Procedure 4.2, I amend the tenant's application by removing the personal agent named as a respondent and replacing it with the correct corporate landlord as provided on the first page of this decision.

Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

This periodic tenancy began in January, 2018. The rental unit is in a multi-unit complex with 134 suites.

A copy of the tenancy agreement between the parties was submitted into documentary evidence. The agreement provides that monthly rent is \$1,300.00 payable by the first of each month. Under the portion of the tenancy agreement setting out what is included in the rent, the agreement provides:

- (a) ONE MEAL PER DAY: The rent includes one meal per day per TENANT. On a monthly basis the TENANT has the choice of breakfasts, lunches or suppers (\$350.00 value per TENANT).

The parties submitted a copy of a document titled Dietary Restrictions Due to Medical Reasons Form. The form, completed by the tenant at the start of the tenancy lists that they require limited dairy products, and gluten free. The form provides a checklist of potential dietary restrictions that an occupant may indicate including; celiac, vegetarian, and vegan (no dairy).

The tenant submitted an invoice from the landlord dated June 1, 2019 which indicates that they pay a monthly amount of \$970.00 for a studio suite and \$350.00 for suppers.

The tenant submitted into documentary evidence a page from a Notice of Rent Increase indicating that the rent established on January 1, 2018 is \$950.00 and that effective January 1, 2019 the new rent will be \$970.00. The page of the Notice is not signed by the landlord. The parties gave evidence that the current monthly rent is \$1,320.00.

The tenant submits that the food provided by the landlord in their meal program does not meet their dietary restrictions and has caused them to suffer physical ailments. The landlord testified that they tried to offer the tenant other meals and have worked with their dietary team to accommodate the tenant's requirements but ultimately decided to extend a credit of \$175.00, 50% of the meal portion of the rent, on an ongoing basis. The landlord gave evidence that the credit was offered from April, 2019 onwards.

The tenant seeks a monetary award in the amount of \$875.00, the equivalent of \$175.00 for each of the months since April 2019 that they have not been able to participate in the meal program. The tenant said that they wish to opt out of the meal program entirely and simply pay the base rate for occupancy of the suite.

The landlord submits that the actual amount of the rent for this tenancy is \$1,300.00 inclusive of the food program. The landlord submits that as a non-profit organization they are unable to allow the tenant to opt out of the meal program and offer a full discount of \$350.00.

Analysis

The landlord made some vague submission that the Act does not apply to this tenancy. However, the landlord provided little cogent submissions on this point and no evidence. The landlord testified throughout the hearing that they are not a care facility, hospital or health facility, and provide no personal health care or therapeutic treatment or services.

I find, based on the minimal submissions made, that the landlord has not shown that the Act does not apply to this tenancy. On the basis of the totality of the evidence submitted I find that this tenancy falls under the jurisdiction of the Branch and the Act.

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. This provision is also read in conjunction with paragraph 65 (1)(f) of the Act, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

There is contradictory information as to what is the monthly rent for this tenancy. The written tenancy agreement provides that the monthly rent is \$1,300.00 inclusive of meal service. The landlord submits that is the full amount of rent. However, the invoices issued by the landlord and the Notice of Rent Increase references that the monthly rent is \$950.00. The meal service is a separate item valued at \$350.00.

In these circumstances where there is a conflict between the tenancy agreement signed by the parties and other documents referencing the tenancy I find that the information set out in the tenancy agreement to be correct. Therefore, I accept that the monthly rent for this tenancy is \$1,300.00 payable on the first of each month.

I find that the tenancy agreement provides that included in the rent is a meal service valued at \$350.00. Furthermore, I find that the landlord makes inquiries about dietary restrictions of the occupants of the building. The reasonable conclusion is that the landlord prepares meals catering to any dietary restrictions that a tenant may possess.

I accept the evidence of the parties that the landlord made some attempts to accommodate the tenant's requirements but ultimately determined that they are unable to provide consistent meals that fit all of the tenant's needs. I find that both parties made reasonable efforts by exploring if other meals would be a better option, and attempting to provide some alternate

menu options. I find that there is an obligation on the landlord to provide acceptable meals to the tenant. Based on the inquiries about the dietary restrictions on the standard form, I find it reasonable to expect that the landlord provide meals to accommodate those specific diets. While I accept that not all dietary restrictions may be accommodated, based on the testimony provided by the parties, I find that the tenant's needs could be met by a vegan, celiac diet. Options which are available on the standard dietary intake form.

I accept that the landlord was unable to accommodate the tenant's dietary restrictions and instead offered a partial credit for the meal program. I accept the evidence that the landlord currently offers a 50% credit for the meal program in the amount of \$175.00.

While the landlord gave testimony that the \$350.00 value of the meal programs goes towards infrastructure, staffing and other programs provided, I find that is a matter of operational budgeting. The tenancy agreement provides that the value of the meal program to each tenant is \$350.00 and I accept the evidence on its face.

In the present case I find that the tenant is suffering a reduction in the value of the rent paid. Based on the evidence I accept that the value of the meal program is \$350.00. I accept that the tenant has been unable to participate in the meal program since April, 2019 and therefore there has been a loss of value of the tenancy in that amount. The tenant has been provided a credit of half that amount of \$175.00 from April, 2019 when the parties determined that the landlord could no longer provide meals to the tenant.

I find that the tenant has shown that there has been a loss in the value of the tenancy by \$175.00 from April, 2019 onwards. Accordingly, I issue a monetary award in the amount of \$875.00, the equivalent of \$175.00 for 5 months, in the tenant's favour as against the landlord.

I further find that as there has been a reduction in the value of the tenancy, the tenant is entitled to a reduction in the rent. As the parties have been clear that the value of the meal program is \$350.00, I allow a deduction of that amount from the monthly rent payable. Therefore, I allow a reduction of \$350.00 from the monthly rent of \$1,320.00 for a rate of \$970.00.

As the tenant was successful in their application the tenant may recover their filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$975.00, which allows the tenant to recover the loss of value of this tenancy from April, 2019 to the date of the hearing and recover the filing fee.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I order that the monthly rent for this tenancy be reduced by \$350.00 from \$1,320.00 to \$970.00.

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: August 23, 2019

Residential Tenancy Branch