



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenant and the landlords attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The landlords confirmed that they received the evidence package from the tenant and had the opportunity to review the evidence prior to the hearing. The landlords confirmed that they did not serve documentary evidence in response to the tenant's application. I find the landlords were sufficiently served in accordance with the *Act*.

I have reviewed all 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.

Preliminary and Procedural Matters

At the outset of the hearing, the parties agreed to correct the spelling of the surnames for the landlords. Accordingly, the tenant's application was amended pursuant to section 64(3) of the *Act* to correctly name the surnames of the landlords.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Did the tenant provide sufficient evidence to support that the landlords should be directed to comply with the *Act*, regulation, or tenancy agreement?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

There is no dispute that a tenancy agreement exists between the parties. The tenant alleges that the landlords wrote “moved” on the tenant’s mail intentionally and is seeking remedy under the *Act*.

Landlord GA admitted that she wrote “moved” on two pieces of mail that were held together with a blue rubber band. The landlord testified that she made an error by writing “moved” as she only read the first piece of mail addressed to their former tenant who first name was “Kenia”. For comparison, the tenant’s first name is Tanya. The tenant testified that when she texted the landlord to find out why “moved” was written on her important mail from ICBC, which contained her new driver’s license, the landlord wrote “sue me”. The male landlord testified that he had other texts that support that the tenant was rude with the landlords; however the landlord was reminded that the landlords served no documentary evidence for my consideration.

The tenant wrote in their application that during a verbal discussion the landlord would do whatever it takes to get the tenant out of the suite, including shutting off the water and power. The tenant confirmed during the hearing that the landlords have not shut off the water or power to the rental unit as of the date of the hearing. The landlords deny saying to the tenant that they would do whatever it takes to get the tenant out of their suite. The landlords stated that they advised the tenant that they would not be renewing the tenancy agreement and expect the tenant to vacate the rental unit. The parties were reminded that the *Act* results in the tenancy agreement reverting to a month to month tenancy once the fixed-term portion has concluded.

Analysis

Based on the documentary evidence, the testimony of the parties, and on the balance of probabilities, I find the following.

Having considered the testimony of the landlords, I do not find their explanation to be reasonable as I don't find the first name of their former tenant "Kenia" is close to that of the tenant. I also find that the text response from the landlord was not reasonable by stating "sue me" and that on the balance of probabilities, I accept the tenant's version of events that the landlords more likely than not wrote the words "moved" on the tenant's mail in an attempt to aggravate the tenant in the hopes that the tenant would move from the rental unit.

Section 28(b) of the *Act* applies and states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(b) **freedom from unreasonable disturbance;**

[Emphasis added]

I find the landlords have breached section 28(b) of the *Act* by writing "moved" on the tenant's mail, which I do not accept was an accident. I also find the landlords' response by writing "sue me" was not a reasonable response to the issue. Therefore, pursuant to section 62(3) of the *Act* I make the following order.

I ORDER the landlords to ensure the tenant's mail is delivered to the tenant without delay and without any interference for the remainder of the tenancy.

In reaching this decision, I have considered that the mail was from ICBC and would more likely than not, contain important information for the intended recipient. In this case, it was important, as the mail contained the tenant's new driver's license.

As the tenant's application was successful, I grant the tenant **\$100.00** for the recovery of the cost of the filing fee under the *Act*. The tenant testified that she has already provided the landlords a post-dated cheque for October 2019 rent. Therefore, I make the following order pursuant to sections 67 and 62(3) of the *Act*.

I ORDER the landlords to immediately return to the tenant the post-dated rent cheque for October 2019.

I authorize the tenant to deduct \$100.00 from October 2019 rent in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*. Therefore, I find the tenant will only pay \$1,175.00 for October 2019 rent. It will be the tenant's responsibility to provide the landlords with a new post-dated cheque for October 2019 rent.

Failure to abide by my orders above could result in the tenant requesting an investigation by the Compliance and Enforcement Unit of the Residential Tenancy Branch, and the possibility of an administrative penalty being levied against the landlords under the *Act*. The maximum penalty for an administrative penalty under the *Act* is \$5,000.00 per day.

Conclusion

The tenant's application is successful.

I have made two orders as described above.

I caution the landlords to comply with section 28(b) of the *Act* for the remainder of the tenancy.

This decision will be emailed to the parties as described above.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 20, 2019

Residential Tenancy Branch