



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:46 am in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 am. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that the landlord was served the notice of dispute resolution form and supporting evidence package via registered mail on October 26, 2019. The tenant provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord was deemed served with this package on October 31, 2019, five days after the tenant mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the Act?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The parties entered into a tenancy agreement starting July 1, 2019. The parties completed and signed a "Shelter Information" form which sets monthly rent at \$925 including utilities. The rental unit is a self-contained basement suite. The landlord occupied the upper suite. The Shelter Agreement lists the landlord's address as the same address as the rental unit. The tenant paid the landlord a security deposit of \$425. The landlord still retains this deposit.

The tenant testified that the landlord moved out of the upper suite. Shortly thereafter, she testified, the landlord cut off the hydro and gas utilities to the rental unit. The tenant testified that she had these services re-instated by putting them in her name. She has not yet received a bill for these utilities, so she is unaware how much this change will cost her.

The tenant also testified that the landlord and her agents have attempted to evict her without giving her any form of notice to end tenancy. She testified that they threatened to call the police to remove her from the rental unit.

Analysis

Section 27 of the Act states:

Terminating or restricting services or facilities

- 27(1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.

Section 1 of the Act defines "service and facility":

"service or facility" includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

[...]

- (b) utilities and related services;

Based on the uncontroverted evidence of the tenant, I find that the landlord has terminated the rental unit's hydro and gas utilities. I find that these utilities are essential to the tenant's use of the rental unit as a living accommodation.

As such, I find that this action of the landlord is a breach of section 27 of the Act, and of the tenancy agreement, which states that monthly rent includes utilities.

As such, I order that the landlord put the rental unit's hydro and gas utilities in her own name and pay any associated cost or fee. I order that the tenant take all reasonable steps to permit the landlord to comply with this order.

If the landlord does not comply with this order by December 31, 2019, the tenant may withhold \$50 from January 2020's monthly rent. If the landlord does not comply with this order by January 31, 2020, the tenant may withhold a further \$50 (\$100 total) from February 2020's monthly rent. For each subsequent month the landlord fails to comply with this order, the tenant may withhold a further \$50 from the following month's rent.

This order does nothing to prevent the tenant from making a monetary claim against the landlord to recover funds she has spent in paying for the utility bills.

Additionally, I caution the landlord that the Act sets out permissible ways that she may end a tenancy (see Part 4 of the Act, sections 44 to 51). The landlord must follow the procedures set out in one or more of these sections in order to end the tenancy. Any other effort to end the tenancy will likely constitute a breach of the Act and may give rise to any number of claims, including monetary claim of the tenant for loss of quiet enjoyment of the rental unit.

Conclusion

Pursuant to section 62(3) of the Act, I order that the landlord put the rental unit's hydro and gas utilities in her own name.

I order that the tenant take all reasonable steps to permit the landlord to comply with this order.

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 10, 2019

Residential Tenancy Branch