



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BONAVIDA MANAGEMENT
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RP, PSF, MNDCT, FFT

Introduction

On January 9, 2020, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* ("the *Act*") to request an order for the Landlord to comply with the *Act*, to request an order for the Landlord to conduct regular repairs to the rental unit, for an order for the Landlord to provide services or facilities required by the tenancy agreement or law, and to recover the filing fee paid for this application. The matter was set for conference call.

On January 17, 2020, the Tenant submitted an amendment to her application to include a request for a monetary order for damages or compensation under the *Act*, for \$5,120.00. On January 28, 2020, the Tenant submitted a second amendment to her application to amend the request for a monetary order for damages or compensation under the *Act*, to \$20,000. On February 6, 2020, the Tenant submitted a third amendment to her application to reduce the request for a monetary order for damages or compensation under the *Act*, to \$5,720.00.

The Property Manager, the Building Manager and the Maintenance Supervisor (the "Landlord") as well as the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me, and the landlord confirmed that they received the Tenant's amendments to the application.

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.

Issues to be Decided

- Should the Landlord be ordered to comply with the *Act*?
- Is the Tenant entitled to an order for regular repairs to the rental unit?
- Should the Landlord be ordered for the Landlord to provide services or facilities required by the tenancy agreement or the *Act*?
- Is the Tenant entitled to a monetary order for losses or money owed?
- Is the Tenant entitled to the recovery of the filing fee of her application?

Background and Evidence

The undisputed testimony of both parties confirmed that the tenancy began on November 22, 2019, when the Tenant took possession of the rental unit. Rent in the amount of \$1,200.00 is due on the first day of each month, that the Tenant paid a partial month rent for the period between November 22, to November 30, 2019, and the Tenant paid the Landlord a \$600.00 security deposit and the beginning of the tenancy. Both the Tenant and the Landlord agreed that a move-in inspection had been completed at the beginning of this tenancy. A copy of the Tenancy Agreement and condition inspection report was submitted into documentary evidence by both the Tenant and the Landlord.

The Tenant testified that the hot water tank in her rental unit only provides 12 minutes of hot water and then turns ice cold. The Tenant testified that this is insufficient for personal use; for showering, washing hands and brushing teeth. The Tenant testified that she discovered during conversations with other tenants in the building, that no other tenants have a limit on their hot water and that her hot water tank was either malfunctioning or insufficient for her use. The Tenant testified that she verbally advised the Landlord on December 30, 2019, that there was something wrong with the hot water tank in her rental unit and had written a formal letter requesting repairs, dated January 3, 2020.

The Tenant also testified that the Landlord attended the rental unit several times between December 30, 2019, and the date of this hearing, with maintenance personnel, a professional plumber and professional electrician, to test the hot water tank. However, the Landlord continued to refuse to correct the lack of hot water provided to the rental unit. The Tenant testified that the professional plumber had told her that the hot water tank needed to be replaced. When asked, if the plumber had written a report stating that the hot water tank needed to be replaced, the Tenant answered yes and that a copy of that report was included in the Tenant's documentary evidence. The Tenant was then

asked to point out the plumber's report in her evidence; the Tenant was not able to direct this Arbitrator to the plumber's report the Tenant had been testifying to during this hearing. The Tenant submitted 44 pages of documentary evidence into these proceedings; a four-page timeline, 11 pictures, 17 pages of emails, and 5 letters.

The Landlord testified that they had received the Tenant's request to repair the hot water tank in the rental unit and had attended the rental unit with a professional electrician and a professional plumber to inspect the hot water tank on two separate occasions. However, both the electrician and the plumber had found nothing wrong with the hot water tank. The Landlord submitted a report from both the electrician and the plumber, as well as the bills for both service calls into documentary evidence.

The Landlord testified that the rental unit is fitted with a 36-gallon hot water tank, that is sufficient for the one tenant that resides in the rental unit, and that they had no previous complaints regarding the amount of water supplied to this rental unit by previous tenants.

The Tenant testified that she suffered mental and physical distress due to the aggressive nature of the Landlord's response to the request for repairs to the hot water tank and the physical act having to shower and wash her hands with cold water. The Tenant is requesting the return of all of her rent, in the amount of \$5,720.00, as compensation.

The Landlord testified that it was the Tenant who was aggressive towards them, during the repair request process, and that is why they asked that she no longer attend their office. The Landlord testified that they have done everything possible to address the Tenant's concerns regarding the hot water tank, but that there is nothing wrong with the hot water tank.

The landlord testified that they believe that a 36-gallon tank is sufficient for the Tenant and that the Tenant must be using an unreasonable amount of hot water if she is running out so quickly. The Landlord testified that they feel that the Tenant is being unreasonable in her demand for unlimited hot water.

Analysis

Based on the documentary evidence before me, the testimony of the Tenant and the Landlord, and on a balance of probabilities:

I find that the entirety of the Tenant's application rests on the issue stemming from the Tenant's claim that the hot water tank in the rental unit is malfunctioning and needs repair or replaced.

During the hearing, I heard contradictory testimony from both parties regarding the need for the hot water tank in the rental unit to be repaired and its suitability to provide sufficient hot water to the Tenant. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Tenant.

After careful review of the Tenant's documentary evidence, I find that the Tenant has not provided sufficient evidence to support the claim that the hot water tank in the rental unit needs repair or is of insufficient size to provide an appropriate amount of hot water. On the contrary, I find that the Landlord has provided creatable evidence, in the form of two reports from an electrician and a plumber, that both report that the hot water tank is in proper working order and is providing sufficient hot water for the Tenant's use.

Therefore, I find that the Tenant has failed to provide evidence sufficient to prove the Tenant's claim that the hot water tank is malfunctioning, in need of repair or insufficient for regular use. Consequently, I dismiss the Tenants' application for an order for regular repairs.

As the Tenant has not been successful in proving the need for repairs to the hot water tank, I decline to award the Tenant's monetary claim due to repairs not being completed to by the Landlord.

Additionally, I find that the Tenant has not proven that the Landlord has breached the *Act* or that the Landlord was not providing services or facilities required by the tenancy agreement or the *Act*. Accordingly, I dismiss the Tenant's application for an order for the Landlord to comply with the *Act* and for an order for the Landlord to provide services or facilities required by the tenancy agreement or the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in this claim, I decline to award them the return of their filing fee for this application.

Conclusion

I dismiss the Tenant's application in its entirety.

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: March 11, 2020

Residential Tenancy Branch