Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

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

- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:21 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. The tenant's agent/daughter 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's agent and I were the only ones who had called into this teleconference.

The Director's Order states:

> Pursuant to sections 71(2)(b) and (c) of the Residential Tenancy Act and sections 64(2)(b) and (c) of the Manufactured Home Park Tenancy Act, I order that, until the declaration of the state of emergency made under the Emergency Program Act on March 18, 2020 is cancelled or expires without being extended:
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> • a document of the type described in section 88 or 89 of the Residential Tenancy Act or section 81 or 82 of the Manufactured Home Park Tenancy Act has been sufficiently given or served for the purposes of the applicable

Act if the document is given or served on the person in one of the following ways:

> • the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;
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> • the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or
>
> • the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

The tenant's agent testified that she served the landlord with the tenant's application for dispute resolution via e-mail on May 8, 2020. An e-mail serving the landlord with the tenant's application for dispute resolution dated May 10, 2020 was entered into evidence. The tenant's agent also entered e-mails between the landlord and the tenant's agent discussing tenancy related matters. I find that the landlord was served in accordance with the March 30, 2020 Director's Order on May 13, 2020, three days after it was e-mailed.

Issues to be Decided

1. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

The tenant's agent testified to the following facts. This tenancy began on June 1, 2012 and is currently ongoing. Monthly rent in the amount of $1,103.00 is payable on the first day of each month. A security deposit of $450.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant applied for dispute resolution on May 7, 2020. No amendments were filed.

The tenant's agent testified that the tenant filed this application for dispute resolution because the tenant required a walk-in shower due to failing health and difficulty entering the bathtub at the subject rental property. The tenant's agent testified that she was seeking an Order for the landlord to install the walk-in shower. The tenant's agent testified that this issue has since been resolved because the landlord agreed to allow the tenant, at the tenant's expense, to install the walk-in shower.

The tenant's agent testified that in today's hearing she is seeking an Order for the landlord to inform the tenant where the main water shut off is. The tenant's agent testified that the tenant also needs a handicapped toilet installed at the subject rental property but when the tenant's contractor attempted to do so, he/she was unable to find the water shut off and the installation could not continue. The tenant's agent testified that this issue arose on May 16, 2020 and that the landlord has not yet provided the location of the water shut off. In support of this claim the tenant's agent entered e-mails between herself and the contractor and between herself and the landlord. The above e-mails were entered into evidence between June 7-8, 2020. The tenant's agent testified that the above e-mails were not served on the landlord.

Analysis

I dismiss the tenant's application for dispute resolution because the tenant's agent testified that the shower matter, the original subject of the tenant's application for

dispute resolution, has been resolved. The tenant did not amend her application for dispute resolution.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I decline to amend the tenant's application for dispute resolution to include an Order that the landlord provide the tenant with the location of the water shut off because the landlord had no notice of this claim and could not reasonably have expected this amendment to occur.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that since the tenant did not serve the landlord with the evidence uploaded to the Residential Tenancy Branch dispute resolution site between June 7-8, 2020, the evidence is excluded from this proceeding.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the $100.00 filing fee, pursuant to section 72 of the *Act*.

Conclusion

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: June 09, 2020

Residential Tenancy Branch