



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, PSF, FFT

Introduction

On June 16, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an order for the Landlord to comply with the Act, a monetary order for damages, an order for the Landlord to provide services, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Preliminary Matters

Along with the issues submitted by the Applicant, there was also a question of jurisdiction. Parties submitted their own copies of the “lease” with the heading of “Commercial Lease Agreement”. I heard the following undisputed testimony from both parties:

- The lease was signed with the knowledge of both parties that the Tenant would be living in the unit.
- The Landlord established a monthly rent and also collected a security deposit.
- The Landlord raised the rent using Residential Tenancy Branch forms and by abiding by the Act.
- The unit had full kitchen and bathroom facilities.
- The Tenant was living in the unit and not running a business.

As such, I find that a tenancy has been established under the Residential Tenancy Act and further, that the “Commercial Lease Agreement” will act as the Tenancy Agreement for this tenancy.

The Tenant submitted four separate claims as part of this Application, and I was aware that we would likely not have the time to get to all of them during today’s hearing once jurisdiction was decided. I asked the Tenant to prioritize the issues that she wanted to address in this hearing, and she stated she wanted to first deal with the monetary order in relation to hydro. As a result of proceeding through the hearing, most of the issues were, in fact, addressed; therefore, I have included them in the “Issues to be Decided” below.

Issues to be Decided

Should the Tenant receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Tenant receive an order for the Landlord to comply with the Act, in accordance with Section 62 of the Act?

Should the Tenant receive an order for the Landlord to provide services, in accordance with Section 62 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

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.

Both parties agreed to the following terms of the tenancy:

The tenancy began on November 26, 2017 and is continuing as a month-to-month tenancy. The rent is currently \$718.20 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$400.00. One of the terms on the Tenancy Agreement is that the Tenant would be responsible for 75% of the hydro bill and that the Landlord would provide those bills to the Tenant. Another term is that the Landlord is responsible for the provision, repair, replacement and maintenance of heating, cooling, ventilation and air conditioning equipment throughout the residential property.

The Tenant testified that she uses power in her rental unit very frugally. Her first hydro bill was \$500.00, and she immediately spoke to the Landlord about the excessive amount. The Tenant submitted hydro bills as evidence and stated that there is a problem with hydro and that there must be a power issue that requires fixing.

The Tenant stated that she has been paying \$100.00 a month for hydro and that she did not receive a copy of any hydro bills until December 2019. The Tenant submitted that she should be paying, and would like to be paying, \$35.00 per month for hydro as this is the estimate she established by using the BC Hydro usage calculator. The Tenant also stated that she has been overcharged and is asking for compensation in the amount of \$657.00.

The Landlord testified that the Tenant's rental unit along with two unoccupied office spaces, make up the area related to the hydro bill. The Tenant's rental unit takes up 75% of the overall space; therefore, the term in the Tenancy Agreement to pay 75% of the hydro.

The Landlord stated that they have been responsive to the Tenant's requests and have reviewed the bills with the Tenant and requested BC Hydro to investigate the metering.

The Landlord referenced the hydro bills that the Tenant submitted, added them up for the year, divided by twelve months and multiplied by 75% to demonstrate that the hydro bills are averaged out to more than \$100.00 a month for the tenant. The Landlord acknowledged that they have been accepting the Tenant's regular payment of \$100.00 a month and stated that they have been paying the balance.

The Landlord stated that there have been negotiations with the Tenant about who should take responsibility for the hydro account. The Landlord stated that the Tenant indicated that she would take over the account, if she had access to the two office spaces on her floor. The Landlord's are not providing access to the two office spaces to the Tenant. The Landlord said that they have removed their name from the hydro account.

The Landlord submitted that the Tenant has been paying less than the agreed upon amount of 75% of hydro and that there is no outstanding balance that the Landlord should compensate the Tenant.

Analysis

Firstly, I will restate that I find that the relationship between the Applicant and the Respondent are that of Tenant and Landlord. I find that the terms of their "lease" can be defined as a Tenancy Agreement under the Residential Tenancy Act. I find that I have jurisdiction in this Application for Dispute Resolution.

The Tenant requested that the Landlord comply with the Act and the Tenancy Agreement. In her application, she submitted that the Landlord illegally turned off the power to her rental unit. During the hearing, the Tenant stated that the power has not been turned off, but that the Landlord had removed their name from the account. After reviewing the submissions by all parties, I find that the Landlord has complied with the Act and the Tenancy Agreement regarding their responsibility to provide hydro and repair, replace and maintain the heating, cooling, ventilation and air conditioning equipment throughout the residential property. As a result, I dismiss the Tenant's claim for an order for the Landlord to comply with the Act and the Tenancy Agreement.

Both parties provided undisputed evidence that neither party is currently taking responsibility for the hydro account. As a result, **I order the Landlord to continue to take responsibility for providing hydro to the rental unit, as indicated in the Tenancy Agreement.** This term can be mutually altered by the parties; however, if the parties choose to make other arrangements, I would recommend that they do so in writing.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In her application, the Tenant sought an amount of \$4,500.00 for lost wages, being overcharged for hydro, loss of time, fees, gas and photocopying. During the hearing, the Tenant only claimed an amount of \$657.00 for hydro overcharges. I've noted that the Tenant did not provide a monetary order worksheet to support either of these claims. After reviewing the testimony and evidence of both parties, I find that the Tenant failed to provide sufficient evidence that she had suffered a loss. Rather, that the arrangement made to pay \$100.00 a month for hydro versus 75% of the bill, may be to the Tenant's advantage. As a result, I dismiss the Tenant's claim for monetary compensation.

I have noted that there are several terms in the current Tenancy Agreement that may not comply with the Residential Tenancy Act and/or are not being followed by the

parties. One term that I would like to clarify for this tenancy relates to the Tenant's responsibility to pay for hydro. As stated in the Tenancy Agreement, the Tenant is responsible for paying 75% of the hydro bill and that the Landlord is responsible for providing the hydro bills to the Tenant. Based on the precedent set by the parties, I find that the parties have established a new term for paying the hydro; that being that **the Tenant will pay \$100.00 a month towards hydro, regardless of the bill amount.** Of course, this term can be mutually altered by the parties; however, if the parties choose to make other arrangements, I would recommend that they do so in writing.

The Tenant requested that the Landlord provide the services of hydro and to do so at a reasonable amount and to fix "extreme electrical issues". I find that this issue has been addressed with my earlier finding that the Landlord has been providing hydro to the rental unit, and by my order for the Landlord to continue to provide those services. I have also made a decision regarding the responsibility of the Tenant to pay for her portion of the hydro bill; that being \$100.00 a month. I find that the Tenant failed to provide sufficient evidence that the Landlord is not providing the services of hydro, that there are any "extreme electrical issues" or that the Tenant's bill should be lower than \$100.00 a month.

The Landlord provided a Commercial Lease Agreement as a template for a Tenancy Agreement in this tenancy and I find that it has caused confusion for the Tenant and complicated this matter. As a result, and regardless of the Tenant being unsuccessful for most of her claim, I find that the Tenant should be compensated for the cost of the filing fee. **I grant the Tenant permission to deduct \$100.00 from a future rent payment as compensation for the filing fee, pursuant to Section 72 of the Act.**

Conclusion

I dismiss the Applicant's claim for monetary compensation.

I order the Landlord to provide hydro services to the Tenant, pursuant to the Tenancy Agreement

I confirm that the term in the Tenancy Agreement will now be that the Tenant is responsible for paying \$100.00 a month for hydro services.

I grant the Tenant permission to deduct \$100.00 from a future rent payment as compensation for the filing fee, pursuant to Section 72 of the Act.

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: July 13, 2020

Residential Tenancy Branch