



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Terra Property Management and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the “Application”) on April 16, 2020 seeking a monetary order for loss or compensation. Additionally, they seek an order that the landlord comply with the legislation and tenancy agreement.

The matter proceeded by way of a hearing on August 13, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The tenant and the landlord both attended the hearing, and I provided each with the opportunity to present oral testimony. The landlord attended with a legal representative.

In the hearing, both parties confirmed they received the other party’s evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for loss or compensation pursuant to section 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord presented a copy of the Residential Tenancy Agreement. The tenant signed the agreement on August 3, 2012 and the landlord signed on August 22, 2012. The rent amount is \$925.00, with the tenant rent contribution being \$493.00. The agreement sets out what is included in the rent: kitchen appliances, window coverings, sewage, and garbage. Water, electricity and heat are not included in the rent amount.

The tenant applies for a reimbursement for a heat allowance of \$24.00 per month. This was “offered since 2014 and never received.” The total amount of their claim is for \$1,872.00, for the full 78 month-period from January 2014 to April 2020.

The tenant provided a copy of a BC Housing ‘Rent Calculation Guide – Housing Provider Kit January 2019’. This document on page 46 describes a rent calculation guide that gives the direction to “apply a heat allowance according to unit size, type of heat and location”. A heat allowance rate is set by geographical area, as well as unit size. For that provision applicable to the tenant, the heat allowance is set at \$24.00 per month, since 2014.

The landlord takes no issue with the calculation made by the tenant. They do not dispute that the guide refers to a heat allowance amount of \$24.00 per month.

The landlord does refer to the use of the guide and submitted that it is a “guide to help providers, to guide them through providing a subsidy.” The matter of a heat allowance is between the landlord (that here is an agent for BC Housing) and BC Housing. The landlord states it is not a matter of residential tenancy, and not an issue between the them and the tenant here.

In sum, the landlord provides that the tenancy agreement does not incorporate the provisions of the BC Housing ‘Rent Calculation Guide’. The landlord also included a copy of the ‘BC Housing Tenant Handbook’ which states that “Your legal rights and responsibilities are described in your residential tenancy agreement.” The tenancy agreement indicates that heat is not included in the rent amount; therefore, the tenant is responsible for paying that amount each month. The ‘Rent Calculation Guide’ does not create an entitlement for the tenant and they have no legal right to refer to that guide.

Analysis

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the

party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

From the submissions of the landlord, I am satisfied that an agreement was in place between the landlord and tenant for the rental unit. This agreement was signed on by the tenant on August 3, 2012, and the landlord on August 22, 2012. It contains all the terms and agreements between the parties. Throughout, the tenant provided their signature or their initials where required. In the hearing, the tenant did not dispute individual terms included in the agreement.

I find the agreement exclusively provides both parties' obligations. There is no clause in the existing tenancy agreement that provides for the tenant's eligibility for a heat allowance.

I find the landlord here provides the correct legal interpretation of the tenancy agreement: it is the single piece that confers to the tenant their rights and responsibilities. The 'Rent Calculation Guide' is not part of the contract between the landlord and tenant. The issue of heat allowance is between BC Housing and the landlord, not between the landlord and tenant.

I find there was no violation of the *Act*, regulations or tenancy agreement such as it exists. As such, I dismiss the tenant's claim for monetary compensation. The tenant has not shown that they are entitled to compensation for damages or loss that is the responsibility of the landlords.

As the tenant was not successful in their application, I find the tenant is not entitled to recover the \$100.00 filing fee.

Conclusion

For the reasons above, I dismiss the tenant's Application in its entirety and 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 *Act*.

Dated: September 8, 2020

Residential Tenancy Branch