



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jenco Rentals
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT OLC PSF

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;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*; *and*
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

RK ("landlord") appeared as agent for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenant's application and evidence package. The landlord did not submit any written evidence for this hearing.

Issues

Is the tenant entitled to recover the filing fee for this application from the landlord?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on February 1, 2019, with monthly rent currently set at \$1,300.00, payable on the first of every month. The landlord collected a security and pet damage deposit in the amounts of \$650.00 each deposit, which the landlord still holds.

The tenant resides in the upstairs portion of the home with her husband and two children, while the downstairs portion is rented out to another tenant. The tenant filed this application requesting orders that the landlord address the outstanding issues in this tenancy. The tenant testified that the hot water tank does not sufficiently provide an adequate amount of hot water for use by all tenants and occupants in the home. It was undisputed by both parties that although there is one tenant on the tenancy agreement for the lower suite, the tenant has allowed additional, unauthorized occupants to reside with him. The tenant testified that even before these occupants were there, she had to frequently make arrangements with the downstairs tenant to ensure that all parties had sufficient hot water to use. The tenant testified that she had inquired with a plumber who informed her that the size of the tank was suitable for only 4 occupants, and the tenant feels that the current usage exceeds the capacity of the tank. The tenant submits that this issue has been ongoing since January 2020 with no resolution from the landlord.

The landlord responded that they had rented out the two suites over the last 10 years with no issues or complaints about the hot water tank. The landlords testified that the legal suites complied with bylaw requirements, and the hot water tank was sufficient for both suites and all authorized occupants. The landlord confirmed that there are currently additional, unauthorized occupants in the lower rental unit, which exceeds the occupancy of the lower suite. The landlord testified that they are in the process of working with the lower tenant to assist the tenant and the occupants to find new housing.

The tenant also made an application requesting that an order be made to address the issues caused by the additional occupants in the lower suite. The tenant submitted

detailed, written evidence documenting the issues caused by these occupants, including harassment and continued disturbance. The landlord acknowledges the tenant's concerns, and testified that they had only rented the lower suite as a single occupancy rental unit. The landlord testified that upon receiving the tenant's complaints, the landlord has been working with the lower tenant to deal with these additional occupants, but due to the pandemic the resolution has been delayed. As confirmed earlier in this decision, the landlord is currently working on resolving this matter.

Analysis

In consideration of the evidence and testimony before me, I find that the landlord has demonstrated that they are currently in the process of resolving the issues brought up on this dispute, which the landlord attributes to the additional, unauthorized occupants in the lower suite.

Although I acknowledge the tenant's concerns about the hot water tank, I accept the landlord's explanation that in the last 10 years the landlord has had no issues with the capacity of the hot water tank. I find that the evidence provided by the tenant does not support that current tank is inadequate. There is a possibility that the additional occupants has had an impact on the supply of hot water to all occupants in the home, which the landlord is currently attempting to address.

As the landlord is currently in the process of addressing the issues associated with the additional occupants in the lower suite, and as I am not satisfied that the landlord had failed in their obligations under the Act and tenancy agreement, I dismiss the tenant's applications for the requested orders with leave to reapply.

As the tenant's application had some merit, but as the tenant was not successful in obtaining the requested orders, I allow the tenant recovery of half of the filing fee from the landlord.

Conclusion

The tenant's application for the requested orders is dismissed with leave to reapply.

I issue a \$50.00 Monetary Order in favour of the tenant for recovery of half the filing fee. I allow the tenant the above monetary award by reducing a future monthly rent payment until the amount is recovered in full. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of

\$50.00, and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 8, 2020

Residential Tenancy Branch