



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 requiring 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package and written evidence sent by the tenant by registered mail on September 1, 2020, I find that the landlord was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

The tenant gave undisputed sworn testimony that they did not receive the landlord's written evidence until Monday, September 28, 2020, three days before this hearing. The tenant said that they had not had a full opportunity to review all of the landlord's written evidence as they have been undergoing a family issue that will require them to travel to another community the day after this hearing. Although the tenant initially requested an adjournment of this hearing to provide them with more time to consider and review the landlord's written evidence, they later retracted this request as they were willing to engage in discussions with the landlord's representatives to resolve this dispute.

Issues(s) to be Decided

Should any orders be issued against the landlord? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on July 1, 2017 on the basis of a one-year fixed term tenancy agreement that expired on June 30, 2018. When the fixed term ended, the tenancy continued on a month-to-month basis. Monthly rent was initially set at \$1,400.00, payable in advance on the first of each month. The current monthly rent is \$1,472.35. The landlord continues to hold the tenant's \$700.00 security deposit paid when this tenancy began.

The tenant testified that they first sent the landlord an email registering their concern about second hand tobacco and cannabis smoke entering their rental suite in this multi-unit rental building on July 28, 2020. They said that they believed the smoke was entering their suite from other rental units in this building. The tenant confirmed the landlord's agent's assertion that the tenancy agreement did not prohibit smoking from occurring in either this rental unit or this building.

When the tenant did not receive a satisfactory resolution of their concerns, the tenant continued sending emails to the landlord, asking the landlord to take corrective action about the cannabis smoke on August 8, 2020. Although some action was taken by the landlord's building maintenance worker with respect to a person visiting one of the tenants in this building, the tenant was not satisfied with the measures taken against another tenant in this building, and applied for dispute resolution. They maintained that they had experienced a loss in their quiet enjoyment of their tenancy because of the smoke entering their unit from other rental suites in this building.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that the tenant and the landlord's building maintenance worker will check in with each other on a monthly basis.
2. Both parties agreed that if issues arise with respect to this tenancy that the tenant and the landlord's building maintenance worker will communicate with each other by email with a copy being sent to the landlord.
3. Both parties agreed to share the costs of the tenant's \$100.00 filing fee for this application. To accomplish this, the parties agreed that the landlord will destroy the tenant's post-dated rent cheque for October 2020, and that the tenant will replace that rent cheque with one in the amount of \$1,422.35 for rent for the month of October 2020.
4. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application and all issues currently in dispute arising out of this tenancy and that they did so of their own free will and without any element of force or coercion having been applied.

Conclusion

To give legal effect to the settlement agreement as outlined above, I order the landlord to destroy the tenant's post-dated monthly rent cheque for October 2020. I order the tenant to replace this rent cheque with one in the amount of \$1,422.35 for the month of October 2020.

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 01, 2020

Residential Tenancy Branch