



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, FFT

Introduction

On June 15, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a monetary order for compensation, an order for the Landlord to comply with the Act, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord’s Agent and the 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

The Tenant, at the beginning of the hearing, stated that she had moved out of the rental unit. As a result, the issue to have the Landlord comply with the Act was determined as not related to the main issue in the dispute and was severed as per *Rules of Procedure 2.3 - Related Issues*.

The Tenant stated she forwarded 3 pages of evidence on November 4, 2020 to the Residential Tenancy Branch and included a claim for compensation regarding maintenance of the residential property. The Tenant acknowledged that she did not serve these documents to the Landlord. Based on the late submission and that the Landlord was not notified, I find that it would not be fair to proceed on this claim and dismiss this part of the Tenant’s claim with leave to reapply, pursuant to the *Rules of Procedure*.

Issues to be Decided

Should the Tenant receive a Monetary Order for compensation, in accordance with Section 67 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 one-year, fixed-term tenancy began on March 1, 2014 and continued as a month-to-month tenancy. The rent was \$973.00 and due on the first of each month. The Tenant moved out of the rental unit on August 31, 2020.

The Tenant submitted a copy of the Tenancy Agreement and pointed out that the terms of the agreement stated that the Tenant will contract with the city for electrical power, cable, telephone and gas. The Tenant testified that when she signed the agreement, it was understood that the Landlord would supply sanitary sewer, domestic water and garbage collection. The Tenant specifically referred to a term in the agreement that stated the following:

“The landlord may supply and include sanitary sewer, domestic water and garbage collection.”

The Tenant provided copies of sewer costs and calculations to demonstrate that she paid the following;

- \$253.96 in 2017
- \$310.20 in 2018
- \$385.89 in 2019
- \$388.93 in 2020

The Tenant is claiming \$1,338.98 in compensation for the sewer bills she has been paying over the last four years.

The Landlord testified that he was unaware that the sewer levy was being paid by the Tenant and that he was surprised when the Tenant approached him for compensation. The Landlord stated that the owner had thought that the sewer fees were included in the taxes for the property.

The Landlord pointed out that the Tenancy Agreement said that the Landlord “may” supply and include sanitary sewer. He acknowledged that it was not clear language and wondered why, after so many years, the Tenant is now claiming the amount for the sewer bills.

Analysis

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.

When I consider if the Tenant has established a monetary claim, pursuant to section 67, I refer to the Tenancy Agreement that clarifies what utilities the Tenant is responsible for and the term that indicates the Landlord will likely be responsible to supply sanitary sewer services. The Tenant provided undisputed testimony that the Landlord, at the beginning of the tenancy, indicated that they would be responsible for the sanitary sewer services and the Landlord testified that he and the owner thought that the Landlord had been paying the sanitary sewer fees as part of the residential property taxes.

In this case, I find that the Tenant has proven a loss that stemmed from a violation of the Tenancy Agreement; specifically, that the Landlord failed to pay for the sanitary sewer fees. I find that the Tenant has established a monetary claim by providing the invoices and calculations of the fees she paid for the sanitary sewer services.

As such, I find the Tenant has established a monetary claim in the amount of \$1,438.98, which includes \$1,338.98 for compensation for the sewer fees and the \$100.00 in compensation for the Filing Fee for this Application for Dispute Resolution. Based on these determinations, I grant the Tenant a Monetary Order for \$1,438.98, in accordance with Section 67 of the Act.

Conclusion

I grant the Tenant a Monetary Order for the amount of \$1,438.98, in accordance with Section 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: November 10, 2020

Residential Tenancy Branch