



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CUSTOM REALTY LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

On February 18, 2021, the Tenant made an Application for Dispute Resolution seeking an Order to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, and J.F. and M.M. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by registered mail on or around February 25, 2021 and J.F. confirmed that the Landlord received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

The Tenant also advised that she served the Landlord with her evidence by hand in early May some time, but she was not exactly sure when she did this. J.F. confirmed that the Landlord received this evidence on May 5, 2021. As this evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and considered it when rendering this Decision.

J.F. advised that the Landlord’s evidence was served to the Tenant by registered mail on May 7, 2021 and the Tenant confirmed that she received this package. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the

Rules of Procedure, I have accepted this evidence and considered it when rendering this Decision. However, as the Landlord's video evidence was not served to the Tenant, this video will be excluded and not considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an Order for the Landlord to comply?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2016 and the tenancy ended on April 30, 2021. Rent was established at \$1,916.00 per month and was due on the first day of each month. A security deposit of \$900.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

During the hearing, the Tenant was advised that an Order to comply could not be granted as the tenancy had already ended. The Tenant stated that she was also seeking a Monetary Order for compensation. Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute.

On the Tenant's original Application, she did not indicate that she was seeking a Monetary Order for compensation, nor did she indicate a specific amount of compensation that she was seeking. At the hearing, she was asked to specifically outline her requests for monetary compensation, and she indicated that she was seeking compensation totaling the \$1,400.00. However, at no point did she amend her Application to inform the Landlord of this change in her Application. Furthermore, she did not submit a Monetary Order Worksheet to outline the specific breakdown of this amount, nor did she submit any evidence to substantiate a loss in this particular amount.

When reviewing this request, I do not find that the Tenant has amended her Application in accordance with the *Act* and *Rules of Procedure*. I find that it would be prejudicial to the Landlord to proceed with a hearing to address these new claims for compensation

when the Landlord has not been appropriately apprised of them. Therefore, I am not satisfied that the Tenant has adequately established a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. Section 59(5) allows me to dismiss this Application because the full particulars are not outlined. However, as I am not satisfied that the Tenant amended the Application, no claim for monetary compensation was heard. The Tenant is at liberty to apply for monetary compensation on a separate Application.

With respect to the only claim on the Tenant's Application that can be addressed, as the tenancy has ended, I dismiss the Tenant's Application for an Order to comply without leave to reapply.

As the Tenant was unsuccessful in her Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution 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 *Residential Tenancy Act*.

Dated: May 25, 2021

Residential Tenancy Branch