



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, RP, RR, PSF

Introduction

On October 19, 2021, the Tenant applied for a Dispute Resolution proceeding seeking an Order to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking a provision of services and facilities pursuant to Section 62 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with H.F. attending as an agent 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, with the exception of H.F., provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package by registered mail on November 22, 2021 and the Landlord confirmed receipt of this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Tenant’s Notice of Hearing package.

She then advised that she served her evidence to the Landlord on January 20, 2022 by registered mail, and served additional evidence on February 16, 2022 by email. The Landlord confirmed that he received the Tenant's registered mail evidence. H.F. stated that the Tenant's emailed evidence was served late and should not be considered.

Given that the Tenant's evidence of January 20, 2022 was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules"), I have accepted this evidence and will consider it when rendering this Decision. However, as the Tenant served her additional evidence late, contrary to this Rule, I have excluded this evidence and will not consider it when rendering this Decision.

The Landlord advised that his evidence was served to the Tenant by posting it to her door on February 12, 2022. The Tenant confirmed that she received this evidence and advised that she could view the digital evidence. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. The Tenant was asked which issue was the most pressing and she elected to bring forward the issues with respect to a repair Order. As such, this hearing primarily addressed issues related to repairs, and the Tenant was advised that her other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written 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 a repair Order?
- Is the Tenant entitled to a Monetary Order for compensation?

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.

Both parties agreed that the most current tenancy agreement started on June 1, 2019, that the current rent was established at \$1,100.00 per month, and that it was due on the first day of each month. The parties could not agree about the amount of the security deposit or pet damage deposit that were paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenant advised that she is seeking an Order that the Landlord install a third breaker because the Landlord has been using power from the shed that the Tenant has been paying for. It is her belief that there is one septic system on the property, that her rental unit and the Landlord's property each have their own septic pump, that there is one motor for this system, and that she pays solely for the electricity for the use of this motor. She referenced a letter, submitted as documentary evidence, from a Red Seal electrician which supports her position. In addition, she stated that the Landlord uses power tools, cameras, and lights in the shed and that she has been paying for this electricity as well.

She referenced her hydro bills that were submitted as documentary evidence to demonstrate the high cost of electricity, which she believes is indicative of having to pay for the Landlord's utility use. As well, she cited email correspondence where she stated that the Landlord acknowledged using electricity in the shed.

The Landlord advised that the property has one septic system, but each unit has their own septic pump and its own motor, so the Tenant is only paying for her own use of her septic pump/motor. He submitted that the shed was not included in the Tenant's tenancy agreement, but the Tenant was allowed to use it, at no cost, so that she could store her property. He confirmed that the Tenant pays for the electricity for the shed and that he has used minimal electricity there. He stated that he used power tools and the washing machine once and that the lights are for the benefit of the Tenant's parking area. While the security cameras were powered by the Tenant's electricity, they used a minimal amount of electricity. Regardless, he has since changed these cameras to be powered by battery.

He stated that the Tenant's electrician was not qualified to make a determination on the septic system as he was not a plumber, and as such, he would not be able to assess this system properly. He submitted that the reason the Tenant's hydro bills were so high

was because the rental unit was older, without insulation, and that the rental unit had four or five baseboard radiators. However, the Tenant admitted her preference of using space heaters instead. He stated that the Tenant has not submitted any evidence to support her allegation that there is one motor for the entire septic system and that she pays for this electricity. As well, he questioned the Tenant's credibility and he referenced a past Decision of the Residential Tenancy Branch which corroborates his belief that the Tenant is not being truthful in her submissions (the relevant file number is noted on the first page of this Decision).

H.F. advised that the letter from the electrician did not provide his last name and was not signed by him. She submitted that she attempted to investigate whether or not this person was a certified Red Seal electrician, and from the limited information provided, this could not be verified. As such, the contents of this letter should be considered hearsay. With respect to the hydro bills that the Tenant provided, she stated that the majority of those bills average approximately \$200.00; however, the bills with a significantly higher total are due to the fact that the Tenant carried over a balance from previous bills.

She confirmed that there is a separate septic pump, with its own motor, at each property and that the Tenant is only paying for the use of her own pump and motor. As per the tenancy agreement, the Tenant is responsible for her own electricity and the pumping of waste from the rental unit. She reiterated that the shed was not part of the tenancy agreement but was provided to the Tenant as a courtesy. The Landlord used minimal power and this cost was offset by free use of the shed. Otherwise, anything that consumes power in the shed is solely for the benefit of the Tenant as the security cameras have now been switched to battery power.

The Tenant confirmed that she did not submit any documentary evidence to prove that her electrician was a certified Red Seal electrician. She also acknowledged that the letter is not signed and that his last name was not provided; however, she did include his license number. She stated that the Landlord was present when the electrician was conducting his assessment, and the Landlord did not question this at the time.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* outlines that the Landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, make it suitable for occupation by the Tenant.

With respect to the Tenant's claims, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the evidence and testimony of the parties and considering it in its totality, I do not find that the Tenant has provided sufficient evidence that there is only one septic tank motor for the entire property, and that she pays solely for the use of the electricity. The one piece of evidence that she submitted that would specifically pertain to this issue is that of her electrician. However, in reviewing this letter, I find that the absence of a signature, a last name of this person, or any documentation that substantiates this person as a qualified Red Seal electrician causes me to place limited weight on the reliability of this evidence. Without more substantial evidence establishing that there is only one septic pump motor for the entire property, I am not persuaded of the reliability of the Tenant's claims.

With respect to the Tenant's claims that her hydro bills are excessive, and this supports her allegations that there is only one septic tank motor that she pays solely for, I find when reviewing her documentary evidence, most of the bills that were outliers in terms of exorbitant amounts were due to the Tenant's failure to remedy past bills. Otherwise, generally, the bills were relatively, on average, the same amount.

Regarding her claims with respect to the electricity use in the shed, the undisputed evidence is that the use of this shed was provided to her as a courtesy and was not part of the tenancy agreement. While the Landlord acknowledged using tools and the washing machine once, and the security cameras as well, I do not find that the Tenant has substantiated any more use than this. I accept that the Tenant is paying for the use of the lights; however, this appears to be to her benefit as it illuminates her parking area.

I also accept that the Tenant was paying for the electricity utilized by the Landlord's use of tools, the washing machine, and the cameras; however, I can reasonably infer that this cost was minimal and there is no evidence before me from the Tenant to demonstrate the exact amount of this loss. Regardless, the Landlord has not used the tools or washing machine any more than the one time and he has now changed the cameras to be battery operated. As the Tenant has failed to accurately establish the exact loss to her, I am not satisfied that the Tenant has justified any claims for compensation.

When assessing the legitimacy of the Tenant's submissions on the whole, I find it important to note that a previous Decision of the Residential Tenancy Branch made specific notes about the conduct of the Tenant, which cast doubt on the credibility of her submissions. In addition, in one email, dated January 23, 2021, that the Tenant submitted as documentary evidence on this new Application, I note that she stated the following:

"Haha I don't give a damn I'm paying for the electric side for you to plug the camera so I can turn off electricity. I'm not afraid of police either who don't give a damn about you or your stupid camera. After the arbitrator decides what she decides you still need to pay five thousand dollars to get an order in Supreme Court to get a bailiff to come here and move me. That can take 3-4 months depending on how backed up the court is. Good luck with that. I deal with that myself personally and since the assigned bailiff cannot physically remove me, or touch me without being charged with assault you are going to have a hell of a time removing me outta here. You are not win it this game. In the mean time we will have our say I small courts with you. You greedy liar"

Apart from much of the information in the Tenant's email being inaccurate, more importantly for this file, I find that this demonstrates the true demeanour and intent of the Tenant. I find that this, in combination with the limited documentary evidence supporting the Tenant's allegations on this file, reveals that there is a consistent pattern being demonstrated by the Tenant that is skewed, misguided, and erroneous. Not only do I find the Tenant to be lacking in credibility, but I also find that the Tenant has submitted insufficient compelling evidence to support any of her allegations.

Given that the burden is on the Tenant to substantiate her claims, I am not satisfied that she has established that there is one septic tank motor that she pays hydro for exclusively. Moreover, I do not find that she has submitted sufficient evidence that her hydro bills are excessively high or that she was not the cause for the cost of those bills. While I acknowledge that the Landlord was responsible for minimal use of the Tenant's

hydro in respect to certain aspects of the shed, I find that this was mostly insignificant. The most prominent draw on power appears to come from the use of the lights, which only benefits the Tenant.

Consequently, I dismiss the Tenant's request for a repair Order for a separate electrical panel to be installed, as I am not satisfied that the Tenant is paying for any of the Landlord's electrical use. Furthermore, I dismiss the Tenant's claims for any compensation related to this issue for recovery of hydro, as I am not satisfied that the Tenant is paying for any electricity apart from what benefits her solely.

As noted above, all other claims made by the Tenant have been dismissed with leave to reapply.

Conclusion

Apart from the issues that have been severed, I dismiss the Tenant's Application pertaining to the issues addressed above 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: March 2, 2022

Residential Tenancy Branch