



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, DRI, OLC, RP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on February 26, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for compensation;
- an order granting a rent reduction;
- an order to dispute a rent increase;
- an order that the Landlord comply with the *Act*, regulation, or tenancy agreement;
- an order for regular repairs; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord's Agent W.M. attended the hearing at the appointed date and time. At the start of the hearing, the Landlord's Agent confirmed that he received the Tenant's Notice of Hearing sometime in March 2022, however, only received the Tenant's documentary evidence on May 31, 2022 which is less than 14 days before the hearing. The Landlord's agent stated that he wished to proceed with the hearing regardless of the fact that he received the Applicant's evidence late and the Landlord did not provide any documentary evidence in response to the Tenant's Application. The Landlord's Agent reconfirmed that he wished to proceed with the hearing.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

The Tenant has submitted a variety of claims which don't relate to each other. At the start of the hearing, the Tenant was asked to determine which issue was the most important that she wished to pursue during this hearing. The Tenant indicated that she's most interested in dealing with the matters relating to the Landlord terminating a service of providing Tenant Insurance.

As such, the Tenant's claims to dispute a rent increase and an order that the landlord conduct regular repairs are dismissed with leave to reapply.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order that the Landlords comply with the *Act*, pursuant to Section 62 of the *Act*?
2. Is the Tenant entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
3. Is the Tenant entitled to a rent reduction, pursuant to Section 65 of the *Act*?
4. Is the Tenant entitled to the recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 1, 2019. Currently, rent in the amount of \$1,380.40 is due to the Landlord each month. A security and a pet damage deposit each in the amount of \$680.00 was paid to the Landlord.

The parties agreed that the Tenant had been provided with Tenant Insurance as part of their tenancy agreement. The parties agreed that on or about the end of 2020, the Tenant was notified by email that the Landlord would no longer be providing Tenant Insurance. The parties agreed that the Landlord did not serve the Tenant with an RTB-24 Notice Terminating or Restricting a Service or Facility. The Tenant stated that the Landlord was not permitted to terminate the Tenant Insurance as it was included in her

rent from the previous Property Manager. A tenancy agreement was provided in support.

The parties agreed that there had been discussion between them to compensate the Tenant, however, the Tenant stated that no agreement was reached. The Landlord's Agent stated that a \$390.00 credit was applied to the Tenant's ledger. The Tenant stated that she was unaware of such compensation.

The Tenant stated that as of February 23, 2021 she secured her own Tenant Insurance at a cost of \$36.87 per month, totalling \$405.60 paid by the Tenant in 2021 for her own Tenant Insurance. Furthermore, the Tenant renewed her Tenant Insurance for 2022 and now pays \$37.50 per month for the past five months, totalling \$187.50.

The Tenant is seeking monetary compensation in the amount of \$591.05 which is the amount paid by the Tenant for Tenant's Insurance thus far, since the Landlord terminated the service of providing the Tenant with Insurance.

The Landlord's Agent stated that the Tenant Insurance which had been included in the Tenant's rent was a much less premium, and estimates the cost of \$20.00 per month. The Landlord's Agent stated that the Tenant had been previously offered this rent reduction, however, has not yet accepted. The Landlord's Agent stated that the Tenant has elected to pay for higher coverage than what had been included in her rent. The Tenant stated that she is paying for the most basic coverage.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 27 of the Act;

- (1) *a landlord must not terminate or restrict a service or facility if; (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or (b) providing the service or facility is a material term of the tenancy agreement.*
- (2) *a landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.*

Where the tenant claims that the landlord has restricted or terminated a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant. There are six issues which must be addressed by the landlord and tenant;

- whether it is a service or facility as set out in Section 1 of the Legislation;
- whether the service or facility has been terminated or restricted;
- whether the provision of the service or facility is a material term of the tenancy agreement;
- whether the service or facility is essential to the use of the rental unit as living accommodation or the use of the manufactured home site as a site for a manufactured home;
- whether the landlord gave notice in the approved form; and
- whether the rent reduction reflects the reduction in the value of the tenancy.

In this case, I accept that the parties agreed that the Tenant had Insurance included as part of their tenancy agreement. I accept that the parties agreed that the Landlord did not serve the Tenant Notice to Terminate the Tenant's Insurance in the proper form. As a result, I find that the Landlord has not complied with Section 27(2) of the *Act*.

I find that the Landlord is responsible for fulfilling the term of the tenancy agreement whereby the Tenant is provided Tenant Insurance. I accept that since the Landlord improperly terminated this service, the Tenant has incurred a financial loss as a result of providing her own Insurance. I find that the Landlord is responsible for compensating the Tenant in the amount of **\$591.05** which is the cost that the Tenant has paid to provide her own Tenant Insurance.

I order the Landlord to reinstate that Tenant's Insurance to comply with the term in tenancy agreement. Should the Landlord fail to reinstate the Tenant's Insurance, I find that the Tenant is entitled to deduct \$37.50 from the monthly rent as compensation for providing her own Tenant Insurance. The Tenant is cautioned that should the Landlord comply with the requirement set out in Section 27 of the *Act*, the Landlord may be allowed to restrict the service in the manner described.

The Landlord's Agent referred to a rent credit applied to the Tenant's account. I find that the Landlord provided insufficient evidence to demonstrate that the Tenant has been compensated any monetary amount. This is further confirmed by the Tenant's claim that she was not made aware of the rent credit.

As the Tenant was successful, I find that they are entitled to the recovery of the **\$100.00** filing fee paid to make their Applications.

Pursuant to Section 67 of the Act, I grant the Tenant a Monetary Order in the amount of \$691.05.

Conclusion

The Tenant's Application was successful. The Landlord breached Section 27 of the Act. The Landlord is ordered to reinstate the Tenant's Insurance to comply with the term in the tenancy agreement. The Tenant is at liberty to deduct \$37.50 from rent payments until such a time that the Landlord comply with this order.

The Tenant is granted a monetary order for compensation in the amount of \$691.05. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

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: June 22, 2022

Residential Tenancy Branch