



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, PSF, LRE, OLC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for:

- a monetary order of \$418.20 for damage or compensation under the Act;
- an Order to reduce the rent by \$300.00 for repairs, services or facilities agreed upon, but not provided;
- an Order to provide services or facilities required by the tenancy agreement or law;
- to suspend or restrict the Landlord's right to enter; and
- an Order for the Landlord to Comply with the Act or tenancy agreement.

However, at the onset of the hearing, the Tenants advised that they had moved out on June 5, 2022; and therefore, only the first two claims were still relevant.

The Tenants and an agent for the Landlord, D.T. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents and evidence by Canada Post registered mail, sent on April 22, 2022. The Tenant provided a Canada Post tracking number as evidence of service. As well, the Agent confirmed receipt of the Tenants' registered mail package.

However, the Tenant said they had not received anything from the Landlord for this proceeding. The Agent said the Landlord's evidence was sent by registered mail; however, she said she did not have the tracking number or the date of service. As I advised the Parties in the hearing, the Tenant's denial of having received this evidence and the Agent's lack of supporting evidence of service means it would be administratively unfair for me to consider the Landlord's documentary evidence; as such, I have not considered this evidence however, the Agent's testimony is evidence before me.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and the Parties confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing (only the Tenants' evidence in this case). I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Parties agreed that the fixed term tenancy began on December 1, 2019, and ran to June 30, 2020, and then operated on a month-to-month basis. They agreed that the tenancy agreement required the Tenants to pay the Landlord a monthly rent of \$1,000.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$500.00, and no pet damage deposit. They agreed that the Landlord still holds the \$500.00 security deposit, as she has applied for dispute resolution in another matter, and holds the security deposit for this claim.

#1 MONETARY ORDER FOR COMPENSATION → \$418.20

I asked the Tenant to explain her first claim, and she said:

It is included in the lease that garbage is included in the rent. When we first

moved in, they had a garbage bin she used and we used, but then they got rid of that. She asked if I'd put it in my name and she would pay, but she never did.

From when I started paying for garbage and to the last one I got, it calculates to \$418.20. I attached the bill from the garbage place from the invoice. The first payment was on September 1, 2020 and it is for every three months. The last one was for March 1, 2022, so yes, that's for a year and six months.

The Landlord responded:

The garbage – yes, we had a bin to begin with, then got rid of it. I approached them when we were getting rid of it. She never disputed it. We each got individual garbage pickup at home. When she abandoned the place, we cancelled the service, but the bill had not been paid for many months. There was never an issue about garbage collection; it was totally agreed upon between the two parties. When their lease ran out, we cancelled it, and they agreed.

I asked the Landlord if there was any written evidence about this agreement regarding the garbage service, and she said:

No, it was quite an amicable arrangement. No one said they didn't agree to it. To my chagrin, I accepted her word. We got rid of the big stinky bin and got our own individual garage containers.

The Tenant responded: "It was never agreed to; she was supposed to pay it - that's why it's in our lease."

The Landlord said: "When I called the garbage collection, her bills have not been paid for many months. I would like to see the bills paid if it comes down to that."

I asked the Tenant if she had paid the garbage bills and she said: "Part of it."

The Tenant submitted an invoice from the garbage collecting company dated September 1, 2020. This invoice is billed to the Tenant and it is for \$69.30, although it does not say to what time period this bill applies.

The Tenant also submitted an invoice dated March 1, 2022, with an unpaid balance of one billing period, plus the newest charges applied. The total for this bill was \$144.90, including taxes and the prior bill that had not been paid. I note the rate the company

charged went up from \$66.00 per period to \$69.00 per period, plus GST, for totals of \$69.30 and 72.45 respectively. The Tenant has claimed \$69.70 per invoice for six time periods for a total of \$418.20. I find this amount reflects the change in the amount billed during the provision of this service.

In clause 3b) of the tenancy agreement, it indicates what is included in the rent. "Garbage collection" is checked off in this section of the tenancy agreement as being included in the rent.

#2 REDUCE RENT FOR REPAIRS/SERVICES/FACILITIES → \$300.00

The Tenant explained that this claim is for work her husband did on the septic system of the residential property when it stopped working. The Tenant said that this is not their responsibility in the tenancy. The Tenant said that the Landlord lives in another province and that they are gone a lot of the time. The Tenant said:

When the septic system was not working, my husband fixed it and it was an agreed to amount that was never paid. We did the repairs in good faith. We agreed to it over the phone. We knew that they were having problems, so they would not have to have someone come out, because it would be expensive.

I asked the Tenant how they calculated the \$300.00 they claim, and she said: "It's the time it took, and what he's worth. It took about 10 hours – that's half of the lowest quote that we got."

The Landlord said:

We were never notified about any quotes they got, and we had it pumped out. [The Landlord's son] worked on it, and [the Tenant] came out and helped. No agreed upon a rate of anything to anyone. There were no phone calls arranging any agreement, no agreement between ourselves and them on any shape that we would pay [the Tenant] for anything. He helped because he was there, that's what he does. It was quite clear that they plugged the sewer, and we had it pumped out.

The Tenant said:

She's right It happened a few times. One time they did it themselves. The second time they were in [another Province] and [my husband] did it himself. We agreed

to it over the phone, and it's in the lease agreement that it's included.

In clause 3b) of the tenancy agreement, it indicates that "sewage disposal" is not included in the rent. However, I find that the residential property has a septic system that provides this service, and which the Parties appear to consider as being included in the tenancy.

Analysis

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

Before the Parties testified, I let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

#1 MONETARY ORDER FOR COMPENSATION → \$418.20

Section 1 of the Act includes a definition of "service or facility", which "includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit. "Garbage facilities and related services" are included within this definition.

Section 27 of the Act sets out a landlord's obligations regarding the termination and restriction of services or facilities. It requires that a landlord must not terminate or restrict a service or facility, if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

Policy Guideline #22, states:

An 'essential' service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation . . . , the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

I find that garbage collection is essential to a tenancy, as the accumulation of smelly garbage would be an ongoing problem on a property. Further, garbage collection is classified as a service or facility in the Act, and the tenancy agreement states that it is included in the rent.

Based on the legislation and the tenancy agreement, I find that the Landlord did not have the right to unilaterally end the provision of garbage collection to the Tenant. I, therefore, find that the Landlord owes the Tenant the recovery of the cost the Tenant assumed for garbage collection after the Landlord ended this service. As such, I **award the Tenants** with **\$418.20** from the Landlord pursuant to sections 1, 27, and 67 of the Act.

I encourage the Tenants to use these funds to pay the outstanding garbage collection invoices.

#2 REDUCE RENT FOR REPAIRS/SERVICES/FACILITIES → \$300.00

I find that the Parties worked together to resolve problems such as issues with the septic system. However, there is no documentary evidence before me to support that the Parties agreed that the Tenant would do repairs to the system for a fee. As such, I find that the Tenants have not provided sufficient evidence in this matter to prove this claim on a balance of probabilities. As such, and pursuant to section 62 of the Act, I dismiss this claim without leave to reapply.

Summary

I grant the Tenants a **Monetary Order of \$418.20** from the Landlords for this award. This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The Tenants' other claims are dismissed without leave to reapply.

Conclusion

The Tenants are partially successful in their Application for compensation from the Landlord. The Tenants provided sufficient evidence to meet their burden of proof on the garbage collection claim; however, they did not provide sufficient evidence to prove their septic work claim on a balance of probabilities, so this is dismissed without leave to reapply.

The Tenants' other claims were irrelevant to the ended tenancy, and therefore, they are dismissed without leave to reapply.

I grant the Tenants a **Monetary Order** of **\$418.20** from the Landlord for this matter. This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 29, 2022

Residential Tenancy Branch