



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

The Tenant seeks an order pursuant to s. 62 of the *Residential Tenancy Act* (the “*Act*”) that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement. The Tenant also seeks the return of her filing fee pursuant to s. 72 of the *Act*.

A.T. appeared as the Tenant. J.R. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised having served the Notice of Dispute Resolution and her evidence on the Landlord, which the Landlord acknowledged having received. The Landlord raised no objections with respect to service. I find that pursuant to s. 71(2) of the *Act* the Tenant’s application materials were sufficiently served on the Landlord.

The Landlord confirmed he did not serve evidence in response to the Tenant’s application.

Issues to be Decided

- 1) Should the Landlord be ordered to comply with the *Act*, Regulations, and/or the tenancy agreement?
- 2) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant began to occupy the rental unit on July 1, 2020.
- Rent of \$2,600.00 is payable on the first day of each month.
- The Landlord holds a security deposit of \$1,300.00 in trust for the Tenant.

I was advised that the rental unit is an upper unit of a residential property, and that the basement is tenanted by other individuals.

A copy of the tenancy agreement was put into evidence by the Tenant. The tenancy agreement includes an addendum in which indicates the upper unit is responsible for paying the cost of heating oil and 60% of the hydro and municipal utility costs. The remaining 40% of the hydro and municipal utility costs are paid by the basement tenants. The Tenant acknowledged having signed the addendum.

The Tenant indicates that when she did the initial viewing of the rental unit, she was advised by the Landlord that utilities cost approximately \$180.00 per month. The Tenant testified, however, that her utility costs have been significantly higher than this. The Tenant advised that the heating oil provides heat to her rental unit but that the basement rental unit is heated by electricity. She argues that the current split in utility expense is inequitable given her heat comes from the heating oil.

The Landlord did not disagree that the current utility split between the rental units needs adjustment. The Landlord confirmed that the basement tenants have signed an identical addendum.

The Tenant requests a revision of the shared utility expense.

Analysis

The Landlord seeks an order that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement.

Pursuant to a s. 62(3) of the *Act*, the director may make any order necessary to give effect to the rights, obligations, and prohibitions under the *Act*, the Regulations, and the tenancy agreement. This includes making an order that the Landlord comply with the *Act*, Regulation, and the tenancy agreement.

In this instance the Tenant acknowledges signing the addendum to the tenancy agreement. The tenancy agreement and the addendum are clear that the Tenant is responsible for paying utilities, that she is responsible for paying the cost for the heating oil, and covering 60% of the other utility bills. Based on the evidence before, I cannot make a finding that the Landlord breached their obligations under the *Act*, Regulation, or the tenancy agreement. The Tenant has a clear contractual obligation to pay as specified within the addendum.

Certain terms to the tenancy agreement may be found to be unconscionable, which s. 3 of the Regulations defines as being oppressive or grossly unfair to one party. However, this was not argued by the Tenant, nor am I satisfied on the evidence before me that the addendum acts in an oppressive manner. Further, the remedy if a term is found to be unconscionable is that it is unenforceable as per s. 6(3) of the *Act*, not that I may revise the agreement.

The Tenant argues she was misled when she entered into the contract. That is not a breach of contract but could be considered a misrepresentation that led to the formation of the tenancy agreement. However, in contract law if a misrepresentation is found to be operative or material to the contract's formation, the remedy is not the revision of the contract, it is that the aggrieved party may avoid the contract. In other words, they may back out of their contractual obligations if they choose to do so. That is not the relief sought by the applicant tenant. I make no finding on whether a misrepresentation was made.

I find that the Tenant has failed to demonstrate that the Landlord has acted in contravention of the *Act*, Regulations, or the tenancy agreement. I dismiss her application without leave to reapply.

Having said all this, the parties are free to renegotiate the tenancy agreement as they so wish so long as it meets the formal requirements of the *Act*. It appears there is an understanding that this may be necessary, and I would encourage the parties to enter such arrangement that they can agree. It bears some mention that any renegotiated tenancy agreement between the Landlords and Tenant cannot affect the rights and

obligations of the tenants in the basement as they would be third parties to the agreement.

Conclusion

I dismiss the Tenant's claim under s. 62 of the *Act* without leave to reapply.

The Tenant was unsuccessful in her application. Accordingly, I find she is not entitled to the return of her filing fee. Her claim under s. 72 of the *Act* is dismissed 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: September 16, 2022

Residential Tenancy Branch