



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLARK RENTAL INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, OLC, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on September 30 2022, wherein the Tenant requested an Order that the Landlord make repairs to the rental unit, an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulations*, and or the tenancy agreement and to recover the filing fee.

The hearing of the Tenant's Application was conducted by teleconference at 11:00 a.m. on December 2, 2022. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Settlement of Tenant's claim for a Repair Order

At the outset of the hearing, the Landlord's representative confirmed the Landlord was agreeable to repairing the roof and would do so within two weeks of the date of the hearing. As such, I record this agreement pursuant to section 63 of the *Residential Tenancy Act* and Rule 8.4 of the *Residential Tenancy Branch Rules of Procedure* and Order as follows: **By no later than December 16, 2022, the Landlord shall attend to the repair of the rental unit roof.**

Issues to be Decided

1. Should the Landlord be ordered to comply with the *Act*, the *Regulations*, or the tenancy agreement?
2. Should the tenant recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided in evidence before me and which confirmed that this tenancy began April 1, 2018. Monthly rent was initially \$2,050.00 and was raised to \$2,131.50 at the time of the hearing.

On page 2 of the residential tenancy agreement the Tenant was required to pay the water bill. The Tenant noted that clause 6 of the Addendum notes that she was to pay \$150.00 per month towards utilities, but that was crossed off and the Landlord wrote "N/A" on the agreement indicating that she would not pay a monthly amount but would pay the amounts when billed. The Tenant confirmed that she pays her hydro and gas and pays them as the bill comes in, not a monthly amount.

The Tenant submitted that despite the fact she has never paid for water and sewer at the rental unit, the Landlord is now demanding that she pay for these utilities. She opposes this request and asks for an Order confirming she is not required to pay towards the water and sewer utilities.

The Tenant stated that despite the fact the tenancy agreement provides that she is to pay the water bill, she never paid for water from the date the tenancy began in 2018 until the Landlord's representative asked her to pay the water bill in September of 2022. She notes that he only asked her to do so after he asked her to agree to a rent increase

and she refused. The Tenant stated that at this time the Landlord's representative, P.S., asked her to pay more rent and that if she didn't she would have to move out. She said that P.S. actually asked her to "come up with a good number or she would have to move out". The Tenant stated that included in the demand notice was an attachment showing the Landlord's mortgage rate.

In response to the Tenant's submissions the Property Manager testified as follows. The Property Manager stated that he spoke to the Tenant about the water bill in 2019. He stated that at that time the Tenant promised to pay the 2018 and 2019 water bill. The Property Manager also stated that at no time did the Tenant ever pay the water bill, but he claimed that he asked her repeatedly to pay and she responded with excuse after excuse. The Property Manager stated that after Covid they did not ask any of the Tenants to pay anything more as they were aware that people were struggling. The Property Manager also stated that there was nothing in writing during those times as it was all verbal. The Property Manager stated that she was a good tenant and he trusted her.

The Property Manager stated that he spoke to the Tenant about the water bill because the owner was upset that she hadn't paid. The Property Manager noted that the water bill was only \$300-400 per year, which added up to \$1,900 total over the course of the tenancy.

In terms of the "rent increase" the Property Manager stated that at the same time as he was discussing the water bill, he also told the Tenant that the owner wanted \$2,500.00 in rent. The Property Manager stated that the Tenant asked if she had to pay that much and he said she didn't but he did inform the Tenant that she could mutually agree to more than the permitted increase of 1.5%. The Property Manager also informed the Tenant as to the Landlord's increase in her mortgage rate and provided the letter to the Tenant.

In reply to the Property Managers testimony the Tenant reiterated that the Property Manager never asked her to pay the water bill until September 2022. The Tenant also stated that she has a good relationship with the Property Manager and they get along well but that she was "flabbergasted" by his request.

Analysis

After considering the testimony and evidence of the parties and on a balance of probabilities, I find as follows.

I find the Tenant is not responsible for paying the water and sewer utility. Although the tenancy agreement provided that water and sewer were not included in the rent payment the evidence before me confirms that those utilities were paid by the Landlord throughout the tenancy such that I find this to be an implied term of the tenancy.

I accept the Tenant's testimony that she was not required to pay these amounts during her tenancy and that the Landlord did not make a request of her to pay these amounts until the fall of 2022 when the Landlord's mortgage rates increased. I find it more likely the Landlord sought additional funds from the Tenant to offset these increased lending costs, as evidenced by the fact the Landlord asked the Tenant to pay more than the permitted rent increase at the time. This is supported by the documentary evidence submitted by the Tenant which clearly showed the Landlord's attempt to raise rent in the fall of 2022 and provided her information about the Landlord's mortgage rates.

The Landlord's representative testified that he asked the Tenant to pay the water and sewer utility in 2019. He also stated that she made several promises to pay but never did. There was no evidence before me to support the Landlord's representative's testimony that he asked her to pay in 2019. Such evidence could have included written demands for payment, reminders about payment, or notices to end tenancy for failure to pay the utilities pursuant to section 46 of the *Act*. I find it more likely the Landlord did not ask the Tenant to pay these amounts as it was an implied term of the contract that the Landlord would pay these amounts.

Section 62 of the *Act* provides as follows:

Director's authority respecting dispute resolution proceedings

- 62** (1) Subject to section 58, the director has authority to determine
- (a) disputes in relation to which the director has accepted an application for dispute resolution, and
 - (b) any matters related to that dispute that arise under this Act or a tenancy agreement.

(2)The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

(3)The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I therefore grant the Tenant's request for an Order pursuant to section 62(3) and find that the Tenant is not responsible for paying for the water and sewer utility; those amounts are to be paid for by the Landlord as has been the case since the tenancy began. I order that the Landlord continue to pay these amounts, and not seek payment from the Tenant, nor seek to end her tenancy for failure to pay.

As the Tenant has been successful in her application I grant her recovery of the filing fee. Pursuant to section 72, I authorize the Tenant to reduce her next months' rent by \$100.00 to recover this amount.

Conclusion

The Tenant's request for an Order that the Landlord make repairs to the roof is granted by consent. The Landlord shall attend to those repairs by no later than December 16, 2022.

The Tenant's request for an Order pursuant to section 62(3) is granted. The Tenant shall not be responsible for paying the water and sewer utility and the Landlord shall not seek related payment or attempt to evict the Tenant for failure to pay those amounts.

The Tenant's request to recover the filing fee is granted. She may reduce her next months' rent by \$100.00.

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: December 22, 2022

Residential Tenancy Branch