



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GARRY MILLER DEVELOPMENTS LTD., OWNERS OF STRATA
PLAN VIS2645, LOTS 1-48
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPE MNR FF

Tenant: CNE, MNRT, MNDCT, RP, AAT, PSF, LRE, LAT, RPP,
OLC, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 10, 2023. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord was represented at the hearing by an agent, and legal counsel (collectively referred to as the “Landlord”). The Tenant also attended the hearing. All parties provided affirmed testimony.

The Landlord acknowledged receipt of the Tenant’s application package, Notice of Dispute Resolution Proceeding, and her amendment.

The Tenant acknowledged receipt of the Landlord’s application package, Notice of Dispute Resolution Proceeding and initial evidence package. The Landlord uploaded a few extra pieces of evidence one day before the hearing (move-out documentation, as well as a signed copy of the “contract”). However, since this evidence was not served to the Tenant, without any compelling reason as to why it was not or could not have been within the acceptable time frame, I find it is inadmissible and will not be considered. There was also no evidence to show that this was “new and relevant” evidence that could not have been submitted within the acceptable time frames under the Rules.

All parties provided testimony and were provided the 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 submitted in accordance with the rules of

procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties agreed that the tenancy is now over, and the Tenant moved out towards the end of December 2022. As such, many of the issues the Tenant applied for are now moot. The Tenant requested to withdraw her application for the remaining issues on her application, since she did not feel adequately prepared to proceed with these claims. I hereby allow the Tenant to withdraw her application, in full.

Further, since the tenancy is over, part of the Landlord's application is also moot (the request for an order of possession). The only remaining ground left to address is the following ground:

1. I want to recover the money for the unpaid rent and/or utilities

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Generally speaking, the parties agreed that the Tenant was an employee of the Landlord, and provided caretaking services to others in the building, and part of her contract was to receive accommodation while she was employed. However, the Tenant was terminated on October 5, 2022, and the relationship further degraded following that time.

The Landlord provided a copy of a contract, between the Tenant and the Landlord, which lays out several employment responsibilities, as well as terms about the Tenant's living accommodation. However, this contract was unsigned. No signed copy of the contract was admitted as evidence.

The Tenant asserts that she has ongoing complaints with the Landlord about what she was paid (and not paid) for her employment. The Tenant stated that she was never given a copy of the contract or any clear explanation as to what she would be paid in addition to her living accommodation for doing the caretaker services.

The Landlord filed an application, and stated that they are seeking \$3,793.56 for unpaid rent from October 6 – December 31, 2022, because the Tenant was fired on October 5, 2022, and she should have to pay for her accommodation between when she was fired, and when she moved out. The Landlord stated that as of October 6, 2022, the Tenant no longer received free accommodation, and the Landlord stated that the value of the caretaker suite is \$1,200.00 per month.

After filing their initial application for unpaid rent, the Landlord also provided a monetary worksheet which was for an amount of \$3,943.56, which was for an extra \$150.00 on top of the amount on the application, for the costs to change the locks on the rental unit door.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent (security deposit overpayment, emergency repairs paid for by the Tenant, illegal rent increases, or another Order by an Arbitrator).

I have reviewed the testimony and evidence on this matter. I note the Landlord attempted to provide a copy of the signed contract one day before the hearing. However, as stated above, this evidence is inadmissible, as it was not served to the Tenant, and there was no compelling reason why it could not have been done, and done within the normal timelines under the Rules of Procedure. There is also no evidence that this piece of evidence was “new and relevant”.

In any event, the only admissible version of the “contract” between the parties is unsigned, and it is not clear whether there was a meeting of the minds with respect to the terms within the contract. I find there is insufficient evidence regarding what monthly rent was, and what the specifics of this agreement were. There is also a lack of evidence showing how the Landlord came up with \$1,200.00 as an amount that the Tenant ought to pay for rent, following the end of her employment. The onus is on the Landlord to demonstrate what they are owed, and why, and in this case, I find the Landlord has failed to sufficiently demonstrate that the Tenant owes the rent as laid out on the Landlord’s application. It appears the Tenant was unclear about what she was supposed to be paid as part of her employment and what the value of the rental unit

was. The Landlord's application to recover unpaid rent is dismissed, in full, without leave.

I note the Tenant has already engaged Employment Standards/Labour Relations for assistance, as she does not feel she was paid correctly, or fully, and she feels mistreated.

With respect to the Landlord's request to recover the \$150.00 for the lock change after the Tenant left, I note this amount was not included in the Landlord's initial application. The initial application filed by the Landlord only set out the \$3,793.56 in unpaid rent. Following this application, a monetary worksheet was uploaded with an increased amount, including a lock change fee of \$150.00. However, no amendment was filed to add or modify claimed amounts, and I find the Landlord's claim is limited to the amount listed on their initial application (rent only).

I decline to award either party with the recovery of the filing fees paid.

Conclusion

The Tenant's application is withdrawn.

The Landlord's application is dismissed, in full, without leave.

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: January 11, 2023

Residential Tenancy Branch