



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RP, FFT

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- an order for the Landlord to make repairs to the rental unit pursuant to section 32; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenant and the Landlord's agent CL attended this hearing and gave affirmed testimony. SM attended as a witness for the Tenant and gave affirmed testimony.

Jurisdiction

The parties agreed that the Tenant does not reside in the subject property, which is the main suite of a house, but sublets individual rooms to long-term subtenants. CL argued that the Tenant is engaged in commercial activity and questioned whether the Act applies in the circumstances.

Section 2(1) of the Act states that the Act applies to tenancy agreements, rental units and other residential property. The Act defines a rental unit as "living accommodation" rented or intended to be rented to a tenant. A tenancy agreement is an agreement between a landlord and a tenant respecting possession of a rental unit and use of common areas, services, and facilities.

In addition, Residential Tenancy Branch Policy Guideline 14. Type of Tenancy: Commercial or Residential states as follows regarding "tenancies established for the purpose of re-renting":

Sometimes a tenant will rent out a number of rental units or manufactured home sites and re-rent them to different tenants. It has been argued that there is a “commercial tenancy” between the landlord and the “head tenant” and that an Arbitrator has no jurisdiction. This generally occurs in a manufactured home park.

The courts in BC have indicated that these relationships will usually be governed by the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act*. It is the nature or type of property that is regulated by the legislation. If the type of property comes within the definitions in the legislation and does not fall within any of the exceptions in the legislation, the Residential Tenancy Act or Manufactured Home Park Tenancy Act will govern.

I find the subject property in this case is part of a residential property and is living accommodation rented or intended to be rented to a tenant. I find the subtenants use the subject property as their living accommodation. I do not find any of the exceptions in section 4 of the Act to be applicable. Therefore, I conclude that the subject property is a rental unit as defined in the Act, and that the Act applies in the circumstances.

Correction of Landlord

This application initially named the former owner and landlord as the respondent. CL confirmed that the Landlord purchased the property in June 2021. By consent of the parties and pursuant to section 64(3)(c) of the Act, I have amended this application to name the Landlord as the respondent.

Partial Settlement

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute, and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise, and achieved a partial resolution of their dispute.

The parties agreed to a final and binding settlement of the Tenant’s claim for the Landlord to make repairs to the rental unit as follows:

1. By consent of the parties, the Landlord will replace and install a working fridge in the rental unit by no later than Saturday, June 24, 2023.

The parties gave verbal affirmation at the hearing that they understood and agreed to the above partial settlement as final, binding, and enforceable.

Filing Fee

The parties were unable to reach a settlement with respect to the filing fee.

The filing fee is a discretionary award usually granted to an applicant by the arbitrator after the applicant is found to be successful on the merits. As the parties have reached a settlement of the primary issue disputed in this application, I grant the Tenant reimbursement of 50% of his filing fee pursuant to section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenant to deduct \$50.00 from next month's rent payable to the Landlord in full satisfaction of the amount awarded.

Conclusion

The parties have settled the Tenant's claim for the Landlord to make repairs to the rental unit as stated above. I make no findings on the merits in regards to this claim.

The Tenant's claim for reimbursement of the filing fee is granted in part. The Tenant is authorized to withhold a one-time amount of **\$50.00** from next month's rent payable to the Landlord.

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 01, 2023

Residential Tenancy Branch