

DECISION

Dispute Codes DRI, MNDC, OLC, OPT, AAT, RR, FF, O

Introduction

This hearing dealt with the tenant's application for dispute resolution under the *Residential Tenancy Act* (the *Act*):

- to dispute an additional rent increase pursuant to section 43;
- to seek a monetary order or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- to seek an order that the landlord comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- to obtain an Order of Possession of the rental unit or site pursuant to section 54;
- to allow access to the unit or site for the tenant pursuant to section 70;
- to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- to recover the filing fee for this application from the landlord pursuant to section 72; and
- for other measures to be taken.

The landlord did not attend the hearing. The tenant appeared at this hearing and was given an opportunity to be heard, to present evidence and to make submissions. The tenant testified that he handed his application for dispute resolution to the receptionist at the landlord's office at 10:08 a.m. on July 13, 2010. He presented into evidence a document with the signature of the landlord's staff member attesting to his service of his application for dispute resolution to the landlord. I am satisfied that the tenant served the landlord with his application for dispute resolution in accordance with the *Act*.

At the commencement of the hearing, the tenant asked to add a request for administrative penalties to his application. I did not allow the tenant to add this to his application. The tenant also asked that any rent reduction issued to him be extended to

the other tenants in his building. I advised him that if others in his building wished to seek a rent reduction they would need to apply for one themselves.

Issues(s) to be Decided

Is the tenant entitled to a monetary order? Is the tenant entitled to an Order of Possession for his storage locker? Is the tenant allowed access to his storage locker? Is the tenant entitled to a reduction in rent for services or facilities agreed upon but not provided by the landlord? Is the tenant entitled to an order outlining the method by which any notices are provided to him by the landlord? Is the tenant entitled to recover his filing fee for this application from the landlord?

Background and Evidence

The tenant testified that he commenced his tenancy on August 1, 1987. He said that he leases the premises on a month-to-month basis and pays \$737.00 in rent each month.

The tenant entered into evidence the following breakdown of the rent reduction he was seeking from the landlord:

Item	Effective Date of Request	Amount of Monthly Rent Reduction Requested
Buzzer Entry	January 1, 2010	\$5.00
Storage Locker	August 1, 2010	25.00
Swimming Pool	March 1, 2010	20.00
Loss of Quiet Enjoyment	Dec. 1, 2009	150.00
Total		\$200.00

Tenant's Application for Rent Reduction

Background and Evidence – Buzzer Entry to Building

The tenant testified that the buzzer entry system that had been used to allow visitors to enter his building for 22 years was discontinued by the landlord on January 5, 2010. He said that the landlord provided notice of the new Enterphone system by a posting in the building on December 17, 2009. The tenant does not normally have a telephone or a cell phone. He testified that the previous entry system was a service that was essential

to the use of his rental unit and is a material term of his tenancy agreement. He asked for the restoration of the previous buzzer entry system, but if that were not possible applied for a reduction in his monthly rent by \$5.00 per month from January 1, 2010.

Analysis – Buzzer Entry to Building

Section 27 of the *Act* governs the termination or restriction of services or facilities by a landlord as follows:

27(1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement...

Residential Tenancy Policy Guideline #8 states that “a material term is a term that the parties agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.” In this case, the onus is on the tenant to provide evidence that the term was a material term of the tenancy agreement. Residential Tenancy Policy Guideline #22 provides additional guidance regarding the interpretation of a material term in a tenancy agreement. This guideline reads in part as follows:

...In determining whether a service or facility is essential, or whether provision of that service or facility is a material term of a tenancy agreement, an arbitrator will also consider whether the tenant can obtain a reasonable substitute for the service or facility...

Over the course of a lengthy tenancy, technologies and security systems change. The tenant gave evidence that the new system implemented by the landlord allows both land-line and cell telephone users to let visitors enter the premises. The tenant also stated that the system also allows video confirmation of visitors to those with television cable access to this feature. I am satisfied that the landlord's Enterphone system is a reasonable substitute for the previous buzzer entry system that was in this building. I dismiss the tenant's application for a reduction in his monthly rent regarding this issue.

Background and Evidence – Storage Locker

The tenant testified that since he moved into this building in 1987, his keyed access storage locker has been included in his rent. He maintains that on June 28, 2010, the landlord commenced notifying tenants that a fee would now be charged to those who held storage lockers. At that time, the landlord was planning to charge tenants who did not have a locker agreement from \$25-\$50 per month. On July 9, 2010, the tenant said that the landlord posted a second notice in common areas to advise that all tenants who had a locker needed to have a written agreement and that the cost of lockers would be \$15.00 per month. Tenants were advised that the hours to access the storage lockers were being changed to 8:30 a.m. until 5:00 p.m. He said that the previous hours of access were from 9:00 a.m. until 9:00 p.m. On July 21, 2010, the landlord posted a third notice in common areas advising that all those who have lockers must have a separate locker agreement signed. The notice stated that “this is whether you are grandfathered as having the locker included in your rent or not.” Tenants were informed that “anyone who is found to not be grandfathered will be subject to a locker charge.”

The tenant asked for a reduction in his rent by \$25.00 per month to reflect the change in the facilities provided by the landlord in his rent. He said that he is concerned that if he signs a separate locker agreement, this will remove this portion of his rent from the rental increase provisions of the *Residential Tenancy Act*. He said that the landlord may at some later date decide to impose charges for his storage locker and that any such charges may be subject to additional tax. He also asked for an Order of Possession for his storage locker and to be allowed access to that locker.

Analysis – Storage Locker

The tenant’s evidence indicates that the landlord intends to “grandfather” those whose storage lockers are included in their rent. Since he has held a storage locker in this building at no charge since 1987, it seems reasonable that he would be covered by the grandfathering clause cited in the landlord’s July 21, 2010 notice. The tenant testified that the landlord has allowed tenants whose storage lockers are included in their rent to sign a locker agreement at no monthly charge. The tenant has provided insufficient

evidence to demonstrate that the landlord is intending to charge him for his storage locker. His evidence suggests that there would be no charge to him if he were to sign a storage locker agreement as the storage locker was included in his previous monthly rent. The tenant has presented insufficient evidence to demonstrate that the changes in hours of access for the storage lockers warrant a reduction in his monthly rent.

I dismiss the tenant's request for a reduction in his rent for the landlord's changes to the storage locker system. I dismiss the tenant's application for possession of the storage locker. If the tenant wishes to retain access to his storage locker, I direct him and the landlord to enter into a storage locker agreement at no charge to the tenant.

Background and Evidence – Swimming Pool

The tenant submitted undisputed evidence that the indoor swimming pool in his building was closed for repairs on or prior to March 2, 2010. He also testified that the landlord posted a June 21, 2010 notice in the common areas that the landlord was encountering difficulties in locating reasonably priced replacement parts for the swimming pool. The landlord requested feedback from tenants regarding the landlord's proposal to replace the swimming pool with a state-of-the-art fitness centre. The tenant testified that the landlord posted another notice in common areas of the building on July 21, 2010 advising that tenants had given an "overwhelming response" in favour of replacing the swimming pool with a fitness centre. The tenant testified that other than removing the water from the swimming pool, no on-site work has been undertaken to convert the swimming pool to a fitness centre. The tenant requested a reduction in his monthly rent by \$20.00 per month from March 1, 2010 until such time as the pool or a suitable replacement (e.g., the fitness centre) is completed and available to tenants.

Analysis – Swimming Pool

I am satisfied that the tenant has demonstrated to the extent necessary that part of his monthly rent included access to the indoor swimming pool in his building. Since the

landlord is no longer providing this service or facility to the tenant, I allow the tenant's application for a reduction in monthly rent by \$20.00 per month until such time as the pool or a suitable replacement (e.g. the fitness centre) is completed and available to tenants. I allow the tenant to reduce his monthly rent by that amount effective from May 1, 2010, a date by which tenants could reasonably have expected repairs and maintenance to have been completed.

Background and Evidence – Loss of Quiet Enjoyment

The tenant provided a number of reasons why he was seeking a \$150.00 reduction in monthly rent from December 1, 2009 for loss of quiet enjoyment of his rental premises, including his loss in confidence in the trustworthiness of the landlord.

Analysis – Loss of Quiet Enjoyment

As the tenant has provided insufficient evidence to substantiate his application for a rent reduction for loss of quiet enjoyment, I dismiss his application for this rent reduction.

Other Issues

Background and Evidence

The tenant complained about the process used by the landlord to notify him of inspections in his suite. He said that notices are pushed under his door. He testified that the requested inspections often provide little advance warning. He asked for an order requiring the landlord to provide at least 24 hours notice of inspections by email, by handing these to him personally, or by placing them in his locked mail box in the lobby of the building.

Analysis

I direct the landlord to provide at least 24 hours notice of any inspections of his rental premises by placing them in his locked mail box in the lobby of his building or by personally handing these notices to him.

As the tenant has been partially successful in his application, I allow him to recover his \$50.00 filing fee for this application from the landlord in the manner set out below.

Conclusion

I allow the tenant to reduce his October rent payment by \$170.00. This amount reflects the reduction in rent of \$120.00 (i.e., 6 months at \$20.00 per month from May – October 2010) and his recovery of his \$50.00 filing fee for this application. I allow the tenant to reduce any future monthly rent payments after October 2010 by \$20.00 until such time as the pool is restored or the fitness centre is completed and available to tenants.

I dismiss the tenant's application for possession of the storage locker. If the tenant wishes to retain access to his storage locker, I direct him and the landlord to enter into a storage locker agreement at no charge to the tenant.

I direct the landlord to provide at least 24 hours notice of any inspections of his rental premises by placing them in the tenant's locked mail box in the building lobby or by personally handing these notices to him.

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*.