



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRESTMARK HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, MNDC, O, OLC, RP, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- an order to the landlord to make repairs (or emergency repairs) to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order for other compensation under the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Two managers (Landlord CW and Landlord EW) attended on behalf of the landlord.

The tenant testified that he served the landlord with the application for dispute resolution package by registered mail on December 1, 2014. He provided a receipt and tracking number within his documentary evidence. Landlord CW confirmed receipt of the package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's dispute resolution hearing package including notice of this hearing on December 6, 2014, five days after its mailing.

Landlord CW also confirmed receipt of the tenant's evidence packages, one package containing 141 pages and one package containing 135 pages of evidence, sent to the landlord on January 21 and January 25, 2014 respectively. I find the landlord duly served with the tenant's evidence packages in accordance with his testimony.

Issues to be Decided

Is the tenant entitled to an order requiring the landlord to make repairs, or emergency repairs, to the rental unit?

Is the tenant entitled to a monetary award for the cost of emergency repairs to the rental unit?

Is the tenant entitled to an order allowing him to reduce his rent for repairs, lack of services or facilities?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*?

Is the tenant entitled to any other compensation under the *Act*?

Background and Evidence

This one year, fixed term tenancy began on April 12, 2014 and is scheduled to end April 31, 2015. The rental amount of \$2500.00 is payable on the first of each month. The landlord testified that he continues to hold a security deposit of \$1250.00 and a pet damage deposit of \$1250.00 both paid by the tenant on April 1, 2014.

The tenant sought \$4100.00 in total in this application. This amount included \$189.28 in lawyer's fees and \$100.00 for a fine levied against the tenant; \$600.00 in reimbursement for the purchase of an air conditioner; \$500 fine against the landlord for neglect in repair of the dryer in the rental unit; \$200.00 reimbursement for car insurance deductible for lack of proper building security as well as a rent reduction for lack of provision of services in the form of heating, laundry facilities, a functioning dishwasher; and an 'unacceptable' intercom ("buzzer") system.

During the course of his testimony, the tenant focussed his submissions on the lawyer's fees and fine; the air conditioning unit; the disrepair of the heating, air conditioning and laundry as well as the buzzer system. The tenant also originally sought repairs however most repairs had been undertaken by the landlord by the time of this hearing, barring repair of the dryer. The tenant did not address the reimbursement for his car insurance during the course of the hearing.

DRYER: The tenant testified, in support of his applications, that the dryer on the residential premises was working extremely slowly and ineffectively between April 17, 2014 and the date of this hearing. He testified that, during that period, he requested several times in both oral and written form that the landlord repair the dryer. On one occasion, May 19, 2014, the tenant was using the dryer and a fire broke out. The tenant testified that he was advised by the fire department and other service providers that the ventilation ducts to the dryer needed regular cleaning and that they were overdue to be cleaned. The tenant requested that his rent be reduced for inconvenience with the dryer inability to use when needed and safety hazard by \$100.00 per month that the dryer has not worked properly.

In her testimony, Landlord CW acknowledges that there was a fire as a result of problems with the dryer. Landlord CW testified that "a serious issue of this kind takes time to fix". She further submitted that the tenant could have chosen to take responsibility to fix the problem. She testified that she believes the tenant was under an obligation to have the dryer fixed himself. She testified that she did not know there was an issue with the ventilation ducts.

HEAT AND AIRCONDITIONING: The tenant also testified that the heating and air conditioning unit on the residential premises has been irregular and not working properly since the tenant's move-in in April 2014. After several communications and requests for repairs, the heating was repaired by the landlord in July 2014. The tenant testified that the air conditioning still does not work and he bought his own air conditioning unit.

Landlord EW testified that the heating was repaired by the landlords, as indicated by the tenant. Landlord CW acknowledged that the heating did not work properly between April and July. Landlord EW testified that, while the "primary system" was not working until July, the landlord's timeline was not unreasonable, particularly since the weather was warmer that time of year. The landlord submitted that the air conditioning was merely a luxury item and is not something the landlord is required to provide to a tenant.

DISHWASHER: The tenant testified that the dishwasher within the rental unit did not work from move-in in April 2014 until sometime in the fall of 2014. The tenant testified that his nanny had to spend much longer on the dish cleaning as a result of this broken dishwasher. The tenant seeks compensation of \$257.00 for the period of time he was not able to use the dishwasher, as well as the payment of extended hours to his nanny to clean dishes by hand.

Landlord EW testified that the dishwasher has also now been fixed. Landlord EW testified that the dishwasher is also a luxury item and is therefore not a priority or a responsibility of the landlord. Further, he submitted that the tenant chose to use his nanny to wash his dishes and that compensating for her time would be beyond any appropriate level of compensation.

BUZZER SYSTEM: The tenant testified that he is concerned for his safety and that his family is repeatedly inconvenienced based on the manner of functioning of the buzzer system in his building. The system requires a resident of the building to let a guest in by coming downstairs to the main door. The tenant testified that his wife stays home to care for their children but cannot be expected to bring the children down in the elevator every time she needs to buzz someone into the rental unit. The tenant seeks \$50.00 per week after February 15, 2015 if the system is not upgraded.

Landlord EW testified that the type of system within the building has been in place since the tenant moved into the rental unit. He states that, because this building is owned by a strata corporation, strata and building owner approval would be required to change the system. He further testified that the current system was put in place to increase security. Landlord EW testified that he is not aware of any other complaints from tenants or owners with respect to the system.

LAWYER'S FEES: The tenant sought reimbursement for lawyer's fees. As a result of a fine levied by the strata against the tenant, the tenant hired a lawyer to write a letter to dispute the fine. The tenant testified that he did not in fact pay any amount of money to the landlord but, as

he is a clothier/shirt-maker, he made the lawyer a shirt. He estimates the cost of his work at \$189.28. He also sought reimbursement for the fine from the landlord.

Landlord EW submitted that this is not a cost that the landlord should incur. He testifies that it is the strata and not the landlord that imposes fines with respect to building rules. He testified that the tenant should bear the cost of his decision to hire a lawyer with respect to this matter. He also provided undisputed testimony that there has been no change in the original decision, where the tenant was found at fault and issued a fine.

QUIET ENJOYMENT: The tenant seeks a reduction in his rent for lack of quiet enjoyment. He testified that all of the above issues; his poorly working dryer, his non-functioning heat and air conditioning unit as well as issues with the neighbours resulting in by-law fines by the strata are as a result of lack of action by the landlords. He submitted that they failed to fix the facilities in a timely manner. He also states that complaints about him and fines issued to him by the strata are as a result of one neighbour's actions. He submitted that it is the landlord's responsibility to address this neighbour and resolve the issue by taking action to have that neighbour evicted. The tenant based the scale of his rent reduction amount on the strata's bylaw scale.

Landlord CW testified that the tenant and his neighbour often complain about each other and raise disputes with one another. Landlord EW testified that both the tenant and the tenant's neighbour have been fined by the strata as a result of complaints lodged against each other. Landlord EW testified that he has worked to understand the tenant's needs and that he has attended to all of the requests that he has received from the tenant. He stated that he believes he has been reasonable and fair. He testified that the tenant's applications for rent reductions are unreasonable.

The tenant submitted that, generally, he relied on the landlord providing services including laundry facilities and a dishwasher as well as heat and air-conditioning as part of his decision to rent from this particular landlord.

Analysis

Rent Reduction – Analysis

The tenant seeks a rent reduction with respect to his poorly working dryer, his dysfunctional dishwasher, the inconvenient buzzer system at the premises, his non-functioning heat and air conditioning unit as well as a rent reduction for lack of quiet enjoyment of his rental unit.

Section 27(1) of the Act declares that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the use of the rental unit as accommodation or if it is a material term of the tenancy. The landlord submitted that some of the items claimed as 'services' by the tenant are in fact luxuries and not material or essential to the tenancy.

Policy Guideline No. 22 addresses the issue of a restriction of facilities or services stating, “[w]here the tenant claims that the landlord has reduced or denied him or her a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant.” The guideline outlines six issues which must be addressed by the landlord and tenant;

- Whether it is a service or facility as set out in Section 1 of the Legislation.
- Whether the service or facility has been terminated or restricted.
- Whether the provision of the service or facility is a material term of the tenancy agreement.
- Whether the service or facility is essential to the use of the rental unit as living accommodation...
- Whether the landlord gave notice in the approved form, and
- Whether the rent reduction reflects the reduction in the value of the tenancy.

Section 1 of the *Act* describes a "service or facility" as including (but not limited to) heating facilities, laundry facilities as well as appliances, that are provided or agreed to be provided by the landlord to the tenant of a rental unit.

In this case, the landlord committed to provide heating facilities, laundry facilities and a dishwasher as part of the tenancy agreement with the tenant. The tenant submitted that the provision of these facilities and services affected his decision to rent this unit from the landlord.

DRYER: The laundry facilities fall within the definition of a service or facility. In fact, Section 1 refers directly to laundry services within the definition. There is no dispute by the landlord that this facility was restricted for a period of time and that it remains to be repaired to full working condition. Given the nature of this tenancy; a family with children renting an apartment with laundry facilities in the building and listed in the tenancy agreement, I find that that this service is essential to the use of the rental unit as living accommodations and that the value of this tenancy is reduced by lack of provision of fully working laundry facilities.

An “essential” service or facility is one which is necessary, indispensable, or fundamental. The test as to whether a service or facility is essential is whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation.

The tenant also sought a “fine” of \$500.00 against the landlord for failure to provide this laundry service. I find that a reduction in rent for lack of services is the appropriate remedy based on the analysis above.

HEAT AND AIRCONDITIONING: With respect to the provision of heating facilities, I find that these are, again, services listed as such within section 1. There is, again, no dispute that those services (particularly heat) were restricted for a period of time and that air conditioning is still restricted. The tenant’s testimony that the air-conditioning was a feature of this tenancy is

undisputed. The provision of heat to the rental unit is both material to the tenancy and essential in that a reasonable person would find it impractical or impossible to use the rental unit for living accommodations without proper heating. With respect to the air conditioning, a reasonable substitute found and the cost of that substitute will be addressed below. I find that the lack of an adequate provision of heat reduces the value of the tenancy and the rent should be reduced accordingly.

DISHWASHER: With respect to the dishwasher, this is an appliance provided as part of the original tenancy agreement. There is, again, no dispute that this service was restricted for a period of time, and was included in the services and facilities the tenant anticipated receiving as part of this tenancy agreement. In regard to this tenancy agreement for this tenant, I find that this service provided suitability as living accommodations. Whether the tenant could obtain a reasonable substitute for the service is a consideration in finding any reduction to the value of the tenancy. In the case of the dishwasher, I find that a reasonable substitute, hand-washing the dishes, was easily available to the tenant and he took this action I accept the landlord's submission that it was the tenant's choice to enlist his nanny to wash said dishes. However, I find that a nominal rent deduction is appropriate in the circumstances.

BUZZER SYSTEM: While the entry and/or security system ("Buzzer system") is a service provided with respect to the tenancy, the nature of that system is not determined by the agreement. This is particularly true when the tenant moved in on the understanding that this was the nature of the system in the building and signed his tenancy agreement with understanding and knowledge of the system in place. This is not a question of failure to provide entrance or security to the tenant or his guests. Nor is this a question of a malfunctioning system or non-operating system, it is merely a system that the tenant does not like. I find that there is no restriction or termination in relation to this service and therefore no reduction to the value of the tenancy.

Since there was a period of time during which the heating and laundry facilities were not available or not fully functional, the tenant is entitled to some rent reduction for that time period. According to both parties, all of the services listed by the tenant, barring the air conditioning and the dryer, have been returned to working order.

QUIET ENJOYMENT: The final ground on which the tenant sought a rent reduction is a claim that his right to quiet enjoyment has been interfered with. Section 28 addresses the protection of a tenant's right to quiet enjoyment. That right includes, but is not restricted to;

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant claims that the fact that the landlord failed to take action with respect to all of the above repairs and that he has yet to address his combative neighbour resulted in a disruption of his right to quiet enjoyment. He seeks compensation on a sliding scale equating to the strata fine schedule used in the building. He suggests that he should receive \$50.00 for the first week of disturbance, \$100.00 for the second week and so on increasing by \$50.00 each week.

The tenant has not provided evidence that illustrates unreasonable disturbance or any violation of his privacy. The tenant did not suggest that his right to possession of his unit has been restricted. The tenant did not provide submissions that evidence significant interference with his use of common areas. Beyond these rights, and beyond the lack of provision of certain services or facilities, I do not find that the tenant has demonstrated the infringement of his basic tenant rights resulting in the interference of his right to quiet enjoyment.

I find that the tenant is not entitled to any form of compensation for the loss of right to quiet enjoyment generally. However, I do find that the tenant is entitled to some compensation for the reduced services and facilities available to him and his family over the course of this tenancy. I find that the rent should be reduced by an amount as follows;

Item	Amount
Dryer – 10 months reduced service x \$50	\$500.00
Heat – 3 months terminated service x \$100	\$300.00
Dishwasher – 1 month reduced service x \$50	\$50.00
Total Monetary Award for Restricted or Terminated Services	\$850.00

Policy Guideline No. 22 provides that, where there is a termination or restriction of a service or facility due to the negligence of the landlord, and the tenant suffers damages as a result of the negligence, an arbitrator may find there has been both a breach of contract and a failure to take reasonable care which resulted in the damages suffered by the tenant and make an award for damages and/or breach of contract. I find the tenant is entitled to a reduction in rent for termination or restriction of services based on the evidence provided. I award the tenant \$800.00 for these restrictions. Implementation of this past rent reduction, given that this tenancy is scheduled to end on April 30, 2015 will be by way of full reduction from March 2015 rent.

Analysis – monetary request

The tenant seeks reimbursement, in the form of a monetary award with respect to his poorly functioning dishwasher, his lawyer fees as well as the purchase of an air conditioner.

I have addressed the issue of any compensation for the poorly functioning dishwasher above, finding a nominal amount in all of the circumstances. I will discuss the reimbursement for lawyer's fees below. I now consider the purchase of the tenant's air conditioner.

AIR CONDITIONER: With respect to the provision of air conditioning facilities, I find that these are services as defined under the *Act*. There is no dispute that those services continue to be restricted. The provision of air conditioning was described as a luxury by the landlord. While that may be so in certain circumstances, the tenant signed the tenancy agreement for this rental on the understanding that air conditioning was available as a part of that tenancy. The tenant, with respect to this service, took reasonable steps and found a reasonable substitute to provide air conditioning to his family. I find that the lack of provision of air conditioning, as relied on by the tenant, reduces the value of the tenancy and the rent should be reduced accordingly. Further, I find that the landlord neglected to take steps to reinstate this service.

I find that the tenant is entitled to compensation for the purchase of his air conditioning unit at \$499.00, reflecting his receipt in this amount.

Analysis – other (order repairs, compliance, lawyer's fees)

The tenant originally sought several repair orders. He acknowledged, at this hearing, that the landlord has now dealt with the majority of the repairs including the heating and the dishwasher. He testified he no longer required an application to have the landlord comply with the *Act* however he required an order against the landlord to fix the dryer as part of his application.

I have found, above, that the dryer is a material service within this tenancy and that the evidence shows the dryer has not been provided over the course of this tenancy. I have awarded \$50.00 per month in compensation for the tenancy to date. I further order that, if the dryer is not repaired and operational by March 31, 2015, the tenant reduce April 2015 rent by \$100.00 for this continuing inconvenience.

LAWYER'S FEES: The tenant sought the recovery of lawyer's "fees" with respect to the dispute of a strata imposed fine and reimbursement for the fine amount. The tenant has not provided evidence that demonstrates how the landlords are responsible for the by-law infraction fee levied or the payment of a lawyer to dispute that fee. Furthermore, the tenant testified that he did not in fact pay the lawyer for his work but provided a services trade. I find that the landlord is not responsible for these costs nor can they be quantified in the circumstances.

The tenant's request for compensation for his car insurance was not addressed during this hearing. On review of his materials, I do not find the documentary evidence illustrated a "lack of security" such that the tenant is entitled to compensation for his car insurance.

Conclusion

I dismiss the tenant's application with respect to compensation for lawyer's fees.

I grant the tenant's application ordering the landlord to repair the dryer. I further order that, if the dryer is not repaired and operational by March 31, 2015, the tenant reduce April 2015 rent by \$100.00.

The tenant withdrew his applications with respect to other repairs as well as the application for the landlord to comply with the *Act*. Those applications are withdrawn.

I grant the tenant a monetary award of \$499.00 with respect to the purchase of an air conditioner and I grant the tenant's application to reduce his rent for reduction in services totalling \$800.00. I order the tenant to reduce his March 2015 rent by \$1299.00 as follows;

Item	Amount
Dryer – 10 months reduced service x \$50	\$500.00
Heat – 3 months terminated service x \$100	\$300.00
Dishwasher – 1 month reduced service x \$50	\$50.00
Reimbursement for Air Conditioner purchase	\$499.00
Total for restricted or terminated services	\$1349.00

The rental amount payable on March 1, 2015 by the tenant to the landlord will be \$1151.00.

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: February 25, 2015

Residential Tenancy Branch

