



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, PSF

Introduction

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

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 25, 2015 ("2 Month Notice"), pursuant to section 49;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and
- an order to the landlords to provide services or facilities required by law, pursuant to section 65.

The landlord SA ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she had authority to represent her husband, landlord AA, the other landlord named in this application, as agent at this hearing (collectively "landlords"). The tenant's mother, "witness SA," testified as a witness on behalf of the tenant at this hearing.

At the outset and throughout this hearing, both parties were asked repeatedly whether they wanted witnesses to testify on their behalf, as both parties initially indicated that they did. However, near the conclusion of this hearing, both parties declined to have witnesses testify on their behalf, aside from the tenant's witness SA, as mentioned above.

The landlord testified that the tenant was served with the 2 Month Notice on January 25, 2015, by handing a copy to witness SA, at the rental unit. The tenant confirmed receipt of the 2 Month Notice on January 25, 2015. In accordance with sections 88 and 90 of the *Act*, I find that that the tenant was duly served with the landlords' 2 Month Notice on January 25, 2015.

The tenant testified that she personally served the landlords with the tenant's application for dispute resolution hearing notice on January 28, 2015, and the tenant's first and second written evidence packages on February 3 and 12, 2015 (collectively "Application"). The landlord confirmed receipt of the notice only, not any written evidence packages. The tenant's witness SA testified that she witnessed the above service on the above dates. The tenant provided a handwritten letter with her evidence package, which she says she served upon the landlords on February 12, 2015. The letter indicates that the landlords were served with the tenant's application and written evidence with a witness present and that the landlords returned the tenant's written evidence packages and placed it in a plastic bag outside the tenant's rental unit door. The letter further states that the tenant was advised by the Residential Tenancy Branch to supply a letter confirming these facts, in advance of the hearing. Although this evidence is served late as per Rule 3.14 of the RTB Rules of Procedure, I find that it is important relevant evidence for this hearing. I accept the letter as a true statement that the landlords were served with the tenant's written evidence packages with witness SA present and that the landlords refused to accept service of the tenant's written evidence packages. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's entire Application, including both written evidence packages, as declared by the tenant and witness SA.

Issues to be Decided

Should the landlords' 2 Month Notice be cancelled?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to the landlords to provide services or facilities required by law?

Background and Evidence

Both parties testified that this month to month tenancy began in the summer of 2012, sometime between May and July. Monthly rent in the amount of \$450.00 is payable on the first day of each month. A security deposit was not paid for this tenancy. There is no written tenancy agreement for this tenancy, as only an oral agreement was made. The tenant continues to reside in the rental unit. The tenant occupies the basement suite of the landlords' house. The landlords reside on the main floor of the same house.

The tenant testified that laundry and internet services were included in her monthly rent from the beginning of her tenancy until it was disconnected without warning on January 12, 2015. The tenant stated that she was permitted to use the landlords' washer and dryer in their rental unit approximately twice per month at no extra cost. The landlord denies that laundry services are included in the monthly rent and she indicated that only water, heat and electricity utilities are included in rent, as the rent is a really low amount. The landlord indicated that the tenant only used the landlords' washer and dryer on two occasions since the beginning of this tenancy, on an urgent basis. The landlord stated that she advised the tenant that the landlords' laundry facilities were not to be used in the future after those two initial occasions.

The tenant indicated that she provided an internet modem to the landlords, which the landlords connected in their main floor suite, so that the tenant could share the landlords' internet plan at no extra cost. The landlord stated that internet services are not included in the monthly rent and that the tenant must pay an extra cost if she intends to share the landlords' internet plan. The landlord stated that the internet network at the landlords' house was previously unsecured as it was not password-protected. The landlord states that she has no knowledge as to whether the tenant shared the landlords' internet plan prior to the network being secured by the landlords. The landlord stated that internet services were not disconnected by the landlords, but rather the network was secured with a password at a later time.

The tenant provided letters from five witnesses, "EG," "AV," SA, "SAA," and "JS." The tenant stated that EG, her former co-worker, assisted the tenant with moving into the rental unit and that he was aware of the internet services being provided to the tenant by the landlords. EG's letter confirms the provision of internet services by the landlords since the beginning of the tenancy and the disconnection of the tenant's internet service. The witness letter from AV indicates that he witnessed a conversation between the tenant and the landlord on January 31, 2015, where the landlord admitted to disconnecting the tenant's internet services on January 12, 2015, services which were previously provided to the tenant from the beginning of her tenancy. The witness letter from the tenant's friend, JS, indicates that she witnessed the tenant previously using the landlords' internet and laundry services when she visited the tenant at the rental unit. This letter also indicates that these services were disconnected by the landlords as of January 12, 2015.

The witness letter, dated February 1, 2015, from witness SA indicates that she has stayed with the tenant for short periods of time while visiting in 2013 and currently, during the time of this hearing. The letter states that internet and laundry services were provided by the landlords and then suddenly disconnected on January 12, 2015.

Witness SA indicated that she used the tenants' internet services to call her son, SAA, using an internet-based video-phone system in the past. The witness letter from the tenant's brother, SAA, indicates that he previously used this same internet-based video-phone system to speak to the tenant and that he is aware that these services were disconnected by the landlords on January 12, 2015, as he is unable to speak to the tenant using this system.

The tenant amended her application for a monetary order, to seek only \$150.00 of the \$300.00 total that she originally applied for at this hearing. The tenant confirmed that the plumbing issue regarding drainage in the shower at the rental unit had been resolved by the landlords and that she was no longer seeking \$150.00 for this item.

The tenant seeks \$100.00 for two months of lost internet services at \$50.00 per month. The tenant states that this is an estimate based on an internet pricing plan with company S, for which she provided a computer printout indicating \$90.00 per month for the maximum internet plan. The tenant stated that since January 12, 2015, she has been using internet services at work and at her neighbour SK's house and that she pays "SK" \$35.00 per month for the use of this service.

The tenant seeks an estimated \$50.00 for lost laundry services at the rental unit. The tenant indicated that since January 12, 2015, she has been using the laundry facilities at SK's house at a cost of \$15.00 per month, which she uses about three to four times per month.

The tenant stated that the landlords did not provide her with 30 days' notice, as per the *Act*, of the withdrawal of internet and laundry services that were included in the tenant's monthly rent since the beginning of the tenancy. The tenant claims that because her rent was not reduced for the withdrawal of these services, that she is entitled to compensation of \$150.00 total for these lost services.

The tenant provided two letters to the landlords, dated January 22 and 23, 2015, both signed and witnessed by SK. The notices indicate that the tenant's internet and laundry services were unlawfully disconnected by the landlords and unless reconnection was established, the tenant had entitlement to deduct the cost of such services from her monthly rent. The letters also discuss harassment by the landlords and the assertion that the landlords were stealing the tenant's mail.

The landlords issued the 2 Month Notice, with an effective move-out date of March 31, 2015, indicating the following reason:

- the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord testified that she requires the tenant's rental unit to be vacant for her own personal space and so that her family members can occupy the rental unit. The landlord further stated that in the future, she intends to renovate and furnish the rental unit. The landlord stated that she intends to change the doors and install new carpet in the rental unit. The landlord indicated that she also intends to replace the hot water tank which is currently causing problems. The tenant denied that there were any current issues with the hot water tank in her rental unit. The landlord confirmed that she had not obtained any permits or approvals for these future renovations or repairs and that she was unsure of the date that any such renovations might take place.

The tenant stated that the landlords issued the 2 Month Notice in bad faith. The tenant claimed that she received a tenant's one month notice to end a monthly tenancy on January 12, 2015, that was drafted and completed by the landlords. The notice indicates a vacancy date of March 1, 2015. The tenant stated that she refused to sign this notice. The tenant's letter to the landlords, dated January 22, 2015, also requests a proper 2 month notice from the landlords or the tenancy would continue. The tenant stated that she was then issued with the 2 Month Notice on January 25, 2015, which was incomplete as it does not have the landlords' name, address or phone number completed in the "landlord" section of the notice. The landlord indicated that this was an oversight, as she believed that she was only required to complete this section if the landlords are a "business," which the landlords are not.

Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, notices, agreements, and emails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

2 Month Notice

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant received the 2 Month Notice on January 25, 2015 and filed her Application on January 27, 2015. Therefore, she is within the 15 day time limit

under the Act. The onus, therefore, shifts to the landlords to justify, on a balance of probabilities, the basis of the 2 Month Notice.

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, has all the necessary permits and approvals required by law and intends to demolish the rental unit or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

“If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”

I find that the landlord has issued the 2 Month Notice for different reasons than those stated on that Notice. At the hearing, the landlord indicated that she requires the rental unit for her personal space and in order for her family to occupy the rental unit. However, she did not indicate this specific reason in her 2 Month Notice. Therefore, I cannot consider this ground for ending the tenancy when analyzing the 2 Month Notice.

The landlord stated that she intends to furnish the rental unit. In my view, this is not a repair but simply an addition to the rental unit.

The landlord indicated that she intends to replace the hot water tank, doors and carpet in the rental unit. The landlord did not indicate a date or a time period, simply stating that this was to be done in the “future” and that any required permits or approvals would be sent to me as evidence, at a later date. The 2 Month Notice requires that permits and approvals are already in place, which the landlord admitted she does not have. Accordingly, I find that the landlords have not met their burden of proof to show that they have all the necessary permits and approvals required by law to renovate the

tenant's rental unit. The landlord did not indicate whether these repairs and renovations were months or years in the future. Even if the landlords intend to repair the rental unit, they have failed to show that the rental unit is required to be completely empty for these renovations to take place. Replacing carpet and doors may simply require the tenant to move to another part of the basement suite during the renovations, as the landlord did not indicate which carpet or doors the landlords intended to replace.

I find that the landlords have not met their burden of proof to show that they issued the 2 Month Notice in good faith. The tenant indicated that she was first provided with a tenant's one month notice for her to vacate on March 1, 2015. The notice was completed by the landlords and the tenant refused to sign the notice. At the same time on January 12, 2015, the tenant's internet and laundry facilities were withdrawn, without notice, by the landlords. The tenant indicated that she provided letters to the landlords on January 22 and 23, 2015, requesting a proper notice to end tenancy, making allegations of mail fraud, asking for reconnection of her internet and laundry services or a reduction in rent for loss of these services. The tenant was then served with the 2 Month Notice just days later on January 25, 2015. Accordingly, I find that the tenant has provided sufficient evidence that the landlords have not issued the 2 Month Notice in good faith.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their onus of proof to show that the landlords, in good faith, have all the necessary permits and approvals required by law to demolish the rental unit or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlords' 2 Month Notice, dated January 25, 2015, is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Internet and Laundry Services

Section 14 of the *Act* states the following with respect to making changes to tenancy agreements:

Changes to tenancy agreement

14 (1) A tenancy agreement may not be amended to change or remove a standard term.

(2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:...

(b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 [terminating or restricting services or facilities]...

Section 27 of the *Act* allows a landlord to terminate or restrict a service or facility included in the tenancy agreement by giving 30 days' written notice to do so. If that occurs, the landlord must reduce the rent "in an amount equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility."

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlords caused a loss of internet and laundry services which were included in monthly rent under the tenancy agreement, for which the tenant is entitled to compensation.

I find that the tenant has provided sufficient evidence that internet and laundry services were included in the monthly rent for this rental unit, at no extra cost to the tenant, as per an oral tenancy agreement. Although there is no written tenancy agreement, I find that an oral, binding contract was made between both parties. If the terms of an oral tenancy agreement are at issue, the landlord bears responsibility for failing to commit the terms of the agreement between the parties into a written tenancy agreement. I found the tenant to be an honest and credible witness. The tenant made important admissions at the hearing which supported her credibility, including the fact that the landlord repaired plumbing in the rental unit, for which the tenant reduced her claim in the amount of \$150.00. I found the tenant's documentary evidence to be credible and convincing, as the tenant provided letters from 5 different witnesses, which supported her testimony. The evidence indicates that witnesses saw the tenant use the internet and laundry facilities provided by the landlords since the beginning of this tenancy, at no extra cost in addition to monthly rent. The landlords provided no documentary or witness evidence for this hearing.

On a balance of probabilities and for the reasons indicated above, I find that internet services and laundry facilities are included in the tenant's monthly rent for this rental unit, at no extra cost to the tenant. Section 1 of the *Act* defines a "service or facility" as "(b) utilities and related services," which I find includes internet services. Section 1 of the *Act* also defines "(f) laundry facilities" as a service or facility.

I find that the parties did not mutually agree that the tenant's internet services and laundry facilities would be terminated, as per section 14 of the *Act*. I also find that the landlords did not provide the tenant with 30 days written notice that they intended to terminate the tenant's access to internet services and laundry facilities. The landlords did not reduce the tenant's rent in an equivalent amount to account for the reduction in value due to this termination of services. Accordingly, I find that the tenant is entitled to compensation for the money she expended on internet services and laundry facilities after the landlords terminated her services. I also find that the tenant is entitled to an order for the landlords to provide services and facilities as per the terms of her tenancy agreement.

The tenant testified that she paid \$35.00 for one month of internet use at SK's home, after her internet services were disconnected by the landlords on January 12, 2015. In accordance with section 67 of the *Act*, I find that the tenant is entitled to reimbursement of this \$35.00 amount from the landlords. The tenant testified that she paid \$15.00 for one month of laundry facility usage at SK's home, after the tenant's use of the landlords' laundry facilities were terminated by the landlords. In accordance with section 67 of the *Act*, I find that the tenant is entitled to reimbursement of this \$15.00 amount from the landlords. Accordingly, I award a total of \$50.00 to the tenant for the loss of internet services and laundry facilities at the rental unit.

The tenant sought to apply for a return of her internet modem, which she says is located in the landlords' home. The landlord denied this fact. The tenant has not applied for a return of any personal property in her Application. Accordingly, I am not considering the tenant's request at this hearing. The tenant is at liberty to file a new application for dispute resolution in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlords' 2 Month Notice is allowed. The landlords' 2 Month Notice, dated January 25, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$50.00 from a future rent payment at the rental unit, in full satisfaction of the monetary order awarded in this decision.

In accordance with sections 62 and 65 of the *Act*, I order the landlords to provide the tenant with internet services and laundry facilities at this rental unit, as part of her monthly rent which is currently \$450.00 per month, at no extra cost to the tenant, for the remainder of this tenancy, until the tenancy is ended in accordance with the *Act*.

I order the landlords to allow the tenant unlimited access to the landlords' internet network, including any required passwords for the landlords' secured internet network. Alternatively, the landlords are ordered to reduce the tenant's monthly rent by \$30.00, for the remainder of this tenancy, for the tenant to obtain her own separate internet services.

I order the landlords to allow the tenant access to the landlords' main floor unit in order to use the landlords' laundry facilities at least twice per month on mutually agreed upon dates. Alternatively, the landlords are ordered to reduce the tenant's monthly rent by a further \$20.00, for the remainder of this tenancy, for the tenant to use alternative laundry facilities outside of the landlords' home.

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

