



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ORCA REALTY INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RP, PSF, RR, O, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; as well as orders requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; to provide services or facilities required by law pursuant to section 65; to make repairs to the rental unit pursuant to section 33; to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and any other remedy or compensation as appropriate under the *Act*; including authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. It should also be noted that the tenant left the teleconference at 11:10 a.m. and did not return to the hearing although the teleconference scheduled for 9:30 a.m. continued and the line remained open until 11:16 a.m. No evidence was taken after the tenant left the teleconference.

With respect to service of documents, the landlord confirmed receipt of the tenant's original application and supporting materials, including a binder of evidence for this hearing. However, 3 days before the hearing, the tenant provided the landlord with further materials. The tenant did not dispute that he had provided some materials 3 days prior to the hearing. The landlord testified that she did not have a full opportunity to review or respond to those materials and that those materials seemed to make reference to a larger amount of compensation than the tenant's original application. The tenant testified that it was his intention to amend his application. However, he did not take the necessary steps to amend his application or to serve the landlord in accordance with the timelines provided in the *Act*. Therefore, I decline to consider the evidence submitted on August 7, 2015 to the RTB and to the landlord.

Preliminary Issue: Amount sought by Tenant in Application

The tenant's original application indicated a figure of \$425.00 sought in compensation in the box described as, "request for a monetary order in the following amount". However, within his well-organized binder of documentary materials, the tenant provided receipts for other amounts, referred to those other amounts on his application form and provided a breakdown, similar to a monetary worksheet, indicating the amounts he claims to have lost as a result of this tenancy. The landlord confirmed service of these materials and I find the materials were served in accordance with the *Act*. Therefore, while I decline to consider any late evidence, I will consider all amounts sought by the tenant beyond \$425.00 that were clearly indicated in his original application. I find that the landlord would have reasonably understood that the tenant intended to seek compensation for other amounts beyond \$425.00 based on both the wording of his application and the previous correspondence between the parties. Approximately 13 days prior to the hearing, the tenant submitted a typewritten letter addressed to the Residential Tenancy Branch stating that "the Tenant has now paid for the following items and requests that the Residential Tenancy Office order the landlord... to reimburse the Tenant for the items below:

1) Re-Key all locks	\$ 561.75
2) Window cleaning	\$ 467.25
3) Power washing	\$ 425.00
4) Central Vacuum Cleaner	\$ 670.88
5) Mini Blinds	\$ 6,000.00
6) Security Deposits	\$ 9,500.00
Total	\$17,642.88

Issues to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss?

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

Is the tenant entitled to an order to the landlord to provide services or facilities?

Is the tenant entitled to an order to the landlord to make repairs to the rental unit?

Is the tenant entitled to an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided?

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on May 1, 2015 as a one year fixed term tenancy. The tenant submitted a copy of the residential tenancy agreement signed on April 16, 2015 that states that "if the tenant ends the fixed term tenancy...the tenant will pay to the landlord the sum of \$6000.00 as liquidated damages and not as a penalty..." The monthly rental amount of \$9500.00 was payable (for the first 6 months) ... The agreement also states that, "The tenant will prepay the 6 months portion of rent in the amount of \$57,000.00..." The parties agreed that the tenant provided a \$4750.00 security deposit and a \$4750.00 pet damage deposit on April 1, 2015. The tenant also indicated in this letter dated July 22, 2015 that he sought return of his deposits from the landlord. The Tenant also sought a rent reduction of \$100.00 per month retroactive to the lease commencement date because the sauna was not working. Finally, the tenant sought permission to end the fixed term tenancy.

At this hearing, it was the tenant's submission that, for the amount of rent that he was paying, the standards of service should have been significantly higher at this particular rental premises. The tenant testified that he felt he was ignored and treated badly. All clauses within the residential tenancy agreement and each page of the agreement were initialled by both parties.

An addendum to the rental agreement provided that, "The parties agree that the Tenant shall be permitted to order standard, tasteful, white mini-blinds of their choice...The Tenant will provide the landlord with a copy of the final invoice and the Landlord will allow the amount of the invoice, including applicable taxes, up to a maximum of \$6000.00, as a credit toward the seventh (7th) month's rent." The tenant submitted a paid receipt in the amount of \$7,069.00 for blinds installed in the rental unit. As a result of the agreed amount at the outset of the tenancy, the tenant claimed \$6000.00 of his expense.

As part of his application, the tenant submitted a binder of evidence. It included email and other correspondence to the landlord's representative including a letter dated May 27, 2015 that made 8 requests and/or complaints regarding items in the rental unit. Specifically, the items are; repair and keys for the garage doors (outer and inner); the provision of landscaping including lawn cutting and gardening (or lack thereof); repair of the kitchen lamp fixture and the sink tap; cleaning of the roof gutters; 32 windows in need of cleaning; and a non-functioning sauna. The tenant submitted photographs of the items included in his complaint letter. The photographs shows dirty gutters and

windows as well as a set of keys that he claims did not work properly, a brown and unkempt lawn as well as a broken kitchen lamp and sink.

The tenant testified, and submitted email correspondence that prior to his move-in, he requested that the landlord power-wash the driveway. The landlord refused this request. After receiving response from the landlord, the tenant had the driveway power-washed at his own cost. He submitted his power-washing bill to the landlord writing on the invoice, "powerwashing was required". The tenant took similar action with respect to the window cleaning at the residence. First, he asked that the landlord to clean the windows verbally and in writing. When the landlord declined to do so, he had the windows cleaned himself. After the window cleaning, the tenant also submitted an invoice to the landlord for payment. The tenant submitted a receipt in the amount of \$467.25 for window cleaning. He also submitted photographs that clearly showed very unclean windows.

The tenant testified that, with respect to the sauna on his premises, this "luxury amenity is useless". He testified that an electrician attended to fix the sauna stated that it could not be repaired. The tenant requested a rent reduction for loss of use of this facility.

Analysis

The tenant proved with documentary evidence to support his testimony, that he requested the landlord re-keyed the locks in the rental unit. Section 25 of the *Act* provides that,

- 25** (1) At the request of a tenant at the start of a new tenancy, the landlord must
- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
 - (b) pay all costs associated with the changes under paragraph (a)

The landlord provided several keys to the tenant. The tenant provided undisputed testimony that all of the keys were the same and that he was concerned about security. I find the tenant's request to rekey the unit was both reasonable and in accordance with the provisions of the *Residential Tenancy Act*. The landlord did not dispute that the tenant made this request or that he refused it. Therefore, I find the tenant is entitled to recover his cost, as shown in his invoice submitted, in the amount of \$561.75 to rekey

the locks in the rental unit. I note that the tenant will be required to return the keys at the end of this tenancy.

The tenant testified that the landlord did not meet his obligations as a landlord and did not maintain the residential premises in the condition to be expected given the amount of rent paid for this particular rental premises. Section 32 of the *Act* indicates that the landlord must provide and maintain the rental unit in a condition that complies with health and safety standards, considering the unit's particular age and location. Residential Tenancy Policy Guideline No. 1 clarifies the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and obligations with respect to services and facilities, including window cleaning, power washing and property maintenance.

The tenant claimed \$467.25 in window cleaning costs. He submitted a receipt documenting the cleaning done. He also submitted photographs that clearly showed very unclean windows. The landlord did not deny that the request was made to clean the windows, that they were "somewhat dirty" or that he refused to clean the exterior of the windows. Policy Guideline No. 1 states that, "[at] the beginning of the tenancy the landlord is expected to provide the tenant with clean windows, in a reasonable state of repair" and that, while the tenant is responsible for cleaning the inside windows and tracks during and at the end of tenancy, the landlord is responsible for cleaning the outside of the windows at reasonable intervals. The tenant submitted correspondence to support his testimony that the landlord refused to meet the tenant's request for window cleaning at the start of his tenancy. Based on the photographs and undisputed evidence of the tenant with respect to the dirt on the exterior of the windows, I find the tenant is entitled to recover the costs of the window cleaning in the amount of \$467.25.

I do not find that the tenant has proven he should be reimbursed for power-washing the driveway of the residence. The tenant provided photographs. I do not find that they reflect a dangerous or even unsightly state of disrepair. The tenant chose to take this action to power-wash the driveway after the landlord indicated he would not pay to do so. There is no provision in the *Act* that reflects a necessity to have a driveway that meets a certain aesthetic. In fact, Policy Guideline No. 1 contemplates differences in styles and standards, indicating as follows: "[an] arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant." A landlord must be mindful of health and cleanliness but is not necessarily responsible for meeting a high standard of the tenant, regardless of the nature of the tenancy or the amount of the rent.

The tenant has not claimed a monetary amount for a failure to provide appropriate landscaping however tenant applied for an order that the landlord comply with the Act. For this reason, I provide a portion of Policy Guideline No. 1 for the benefit of both parties,

- 1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.*
- 2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.*
- 3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.*
- 4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.*
- 5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.*
- 6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.*

Based on the evidence submitted, I decline to order the landlord to landscape the rental premises or to provide specific repairs (for example, the non-functioning sauna). However, the landlord is provided with this informational passage above and I note that the Act provides for remedies to a tenant if the landlord does not meet his obligations under the Act.

The tenant testified, providing clear and undisputed documentary evidence in support of his testimony that the landlord agreed to pay the cost of blinds purchased for the unit by the tenant. The agreement was created by the landlord and signed by both parties as an addendum to the tenancy agreement. The tenant submitted a paid receipt in the amount of \$7,069.00 for blinds installed in the rental unit. As a result of the monetary cap on his agreement, the tenant claims \$6000.00 for this out of pocket expense. Given all of the evidence and the clear conditions of agreement with respect to this item, I find that the landlord is obliged to reimburse the tenant for his cost of \$6000.00 in purchasing blinds for the rental unit.

Results of analysis of monetary Claim: Based on the evidence submitted and my consideration of each claim by the tenant, the tenant is entitled to a monetary claim that includes the following;

Items to be reimbursed by landlord	Amount
Reimbursement for rekeying locks	\$561.75
Reimbursement for window cleaning	467.25
Reimbursement for the purchase of blinds	6000.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Amount owed to the Tenant	\$7079.00

Security Deposit: The tenant provided a security deposit at the outset of this tenancy in the amount of \$9500.00. The *Residential Tenancy Act* defines a "security deposit" as follows:

"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:

- (a) post-dated cheques for rent;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [regulations in relation to fees];

Under section 38 of the *Act*, a landlord is required to return a tenant's security deposit within 15 days of the end of the tenancy (the latter of move-out or the provision of forwarding address) or to file to retain all or a portion of that deposit within those 15 days. This tenancy has not come to an end (see reasons below). Therefore, the tenant's request for a return of the security deposit is premature. I note that the tenant testified that he wished to have the deposit returned by this landlord to ensure a smooth transition of his deposit. I have no evidence to suggest that the landlord will not address the security deposit in accordance with the *Act*. As such, I have no basis to consider an order for return of the security deposit.

Rent reduction: Pursuant to section 27 of the *Act*, a landlord must not terminate or restrict services or facilities. If the landlord does so, he must provide notice of a termination or restriction and he must reduce the rent by a value equivalent to the lack of provision of the facility. The tenant submits that he is entitled to a \$100.00 per month reduction in his rent based on the failure of the landlord to provide a working sauna. The tenant claims that "hot tub" marked within the tenancy agreement facility inclusions

included the provision of a sauna within the unit. The tenant testified that he viewed the sauna when he viewed the unit and inquired about its use. He testified that he expected to use this facility as part of his high rent, high end tenancy. I note that, under the Policy Guidelines, when a tenant claims that the landlord has reduced or denied him a facility without reducing the rent accordingly, the tenant bears the burden of proof to show that;

- the service has been terminated or restricted;
- the service is a material term of the tenancy;
- the service is essential to the use of the rental unit as living accommodation
- whether the landlord gave notice in accordance with the *Act*;
- how the tenancy is reduced in value.

The tenant does not claim that this service or facility, the use of the sauna, was an essential service, something indispensable to the nature of the living accommodation. He also does not claim the service is a material term of the tenancy agreement. However, the tenant suggests that it was an agreed upon amenity ("facility") and an integral part of the decision to rent this premises. Therefore, he submits a \$100.00 rent reduction (approximately 1%) is appropriate. He submits that there is no reasonable alternative in the circumstance for this luxury facility and he should therefore be compensated for its lack of inclusion as agreed upon at the outset of this tenancy.

Section 27 of the *Act* and corresponding Policy Guidelines described above require that the landlord provide notice if a facility agreed to be provided will no longer be available to the tenant. The landlord did not take this step. In fact, the tenant made requests for repair or a rent reduction for this lack of facility on more than one occasion, according to his evidence. There is no evidence, beyond one repair visit described by the tenant, that the landlord made any effort to fix or replace this sauna facility in the rental unit.

While this sauna facility does not impact the tenant's ability to live in the rental premises, it is a facility and amenity that was contemplated as part of this rental. Given the complete lack of the sauna facility during the course of this tenancy, I find that the tenant's request to recover \$100.00 per month over the course of the tenancy is reasonable. As of the date of this decision, the tenant has resided in the rental unit for 5 rental payment periods. I find that he is entitled to \$500.00 in compensation for the lack of sauna facilities in the unit to the date of this decision. Further, I find that, as long as the tenant continues to reside in the rental unit and until the landlord replaces or repairs the sauna to working order, the tenant is entitled to continue to deduct \$100.00 per month from his rent. When the sauna facility is replaced or repaired, the tenant will cease this rent reduction.

Application to end fixed term tenancy: The tenant also sought an early end to his fixed term tenancy. Section 44 of the *Act* provides the conditions for ending a fixed term tenancy.

44 (1) A tenancy ends only if one or more of the following applies:

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

...

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

(emphasis added)

Neither a tenant nor a landlord can give notice for an end to tenancy earlier than the date specified in the tenancy agreement as the end of tenancy unless both parties mutually agree in writing to do so. **A fixed term tenancy has a “predetermined expiry date” for the ... of both parties: ...**

A fixed term may end if a material term of the tenancy has been breached. While I have found that the landlord has failed to provide a sauna facility as originally intended and agreed upon for this tenancy and that the landlord did not clean windows and rekey the locks, none of these represent material breaches of the tenancy or the fixed term agreement between the two parties. The tenant is to be compensated for these failures by the landlord. However, the fixed term tenancy shall remain intact.

As the tenant has been successful in part in his application, I find the tenant is entitled to recover his filing fee for this application.

Conclusion

I grant a monetary order in favour of the tenant as follows;

Items to be reimbursed by landlord	Amount
Reimbursement for rekeying locks	\$561.75
Reimbursement for window cleaning	467.25
Reimbursement for the purchase of blinds	6000.00

Rent reduction \$100.00 x 5 months	500.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Amount owed to the Tenant	\$7579.00

I order that, as long as the tenant continues to reside in the rental unit and until the landlord replaces or repairs the sauna to working order, the tenant is entitled to continue to deduct \$100.00 per month from his rent. When the sauna facility is replaced or repairs I order the tenant will return to his full monthly rental amount.

I caution both parties to ensure that they are meeting their obligations as tenant and landlord in compliance with the Act.

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: September 3, 2015

Residential Tenancy Branch

