



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Salco Management Ltd.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      RR, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order reducing rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude on the first day scheduled, having been adjourned at the request of the landlord's counsel and with the consent of the tenant. My Interim Decision was provided to the parties.

The tenant attended the hearing on both scheduled dates, and the landlord company was represented by legal counsel, who also called 2 witnesses. The tenant and both witnesses for the landlord gave affirmed testimony, and the parties provided evidentiary material, all of which has been reviewed and is considered in this Decision.

At the commencement of the second day of the hearing, the tenant advised that an error appears in the Details of Dispute section of the Tenant's Application for Dispute Resolution, in that the date of the alleged loss of facilities should read September, 2012, not September, 2013.

### Issue(s) to be Decided

Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began on June 1, 2003 and the tenant still resides in the rental unit. Rent in the amount of \$707.00 per month is currently payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the

amount of \$275.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex containing many units, and a copy of the tenancy agreement has been provided.

The tenant further testified that that upon moving in, the tenant was shown certain amenities in the rental complex, such as a recreation room, an exercise room with a sauna, a rooftop deck, a garbage disposal shoot on each floor, parking space, and a resident manager. All were available to the tenant at the beginning of the tenancy. However, things changed when the current managers took over. They do not live on site, and tenants were not given any notice about the new managers or that services or facilities were going to be removed. The new managers took over in late September or early October, 2012.

The recreation room was kept locked from the first day the new managers took the job, and continues to be locked. Previously it was locked at night to prevent loitering and unlocked again the following morning. For the first few years of the tenancy, the tenant's meditation group met in that room and after the group dis-banned, the tenant used it for games and socialization. The tenant bought a dart board and mounted it for all tenants, which is still there but no longer accessible to the tenant.

The tenant further testified that the exercise room/sauna had stationary weights, exercise machines, exercise bikes and treadmill. Previous managers kept it open for most of the time. When new managers took over, they opened it, but now it's closed again and has been for some time, at least a year. The lock has been changed to a combination lock and it seems no tenants have the combination, but the tenant has not asked the managers for it.

With respect to having no current resident manager, the tenant testified that the claim is owing to diminished sense of security in the building. Previous managers walked the halls 3 times daily, but new managers are only at the building during business hours. Now no one walks the halls or parking lot. Thefts and vandalism have occurred which the tenant believes would not have happened if there was a resident manager on site.

The tenant further testified that the tenancy agreement includes parking and the tenant's parking spot was visible from his apartment. Since the new managers have taken over, the tenant has to park at the rear of the building under a No Parking sign. There is a security camera there, but the tenant does not believe it's useful.

Two years ago, the current managers posted a notice saying that if tenants are locked out of their rental units, they are to call a locksmith. That is a cost of \$120.00 to \$180.00 depending on the lateness of the hour. Previous managers have been

resident, and if locked out, the tenant would just have to call and the tenant would be let in. The current managers put up the notice to relieve them of their responsibilities as managers. The tenant spoke with the owner of the complex in May 2015 about the lack of resident managers was not working out, as well as the issues of the recreation room, locksmith issue and thefts. The owner wasn't aware of the locksmith issue and said he would talk to the managers, but the tenant is not aware of whether or not that has happened.

The tenant submits that aside from parking, none of the facilities are on the tenancy agreement, but the *Residential Tenancy Act* includes use of facilities and do not have to be specified in the tenancy agreement. The tenant was made aware that they were available for use by him at the beginning of the tenancy. No reduction in rent or notice of the loss of use of any of those facilities has been provided by the landlord.

The current managers have also closed the garbage shoots which were on each floor. They put a sign on it last summer that it was getting clogged on weekends and tenants had been warned, and now it's locked and tenants have to take garbage down the elevator and outside. The tenant resides on the 4<sup>th</sup> floor.

The tenant has provided a copy of a previous Decision dated in October, 2015 wherein a rent reduction of \$100.00 per month was ordered for loss of facilities and the arbitrator ordered re-opening a room. That was approximately a 10% reduction. The tenant further testified that those facilities were a material term of the tenancy agreement and that he had turned down another 2 bedroom rental unit for this 1 bedroom unit for the same price because the tenant valued the recreation room, which would be at least \$200.00 per month more.

The tenant has not put any of these issues in writing to the landlord.

The tenant claims a \$50.00 per month reduction for loss of the recreation and exercise rooms; \$30.00 per month for loss of a resident manager (which calculation includes \$10.00 for having to call a locksmith), \$10.00 per month for loss of the parking space; and \$10.00 per month for loss of the garbage shoot.

**The landlord's first witness** (JT) is one of the managers of the rental complex. In September, 2012 a notice was placed on the recreation room door indicating that there had been vandalism and the recreation room is now closed. There are plans to re-open it, but the exact date is unknown. A number of modifications have been made to the laundry area, bike storage area, and all decks on the exterior.

When the witness started management duties in October, 2012 she noticed 3 scooters and 1 motor cycle in the parking area, and it was her understanding that's where all motor scooters, bikes and motorcycles are parked. The tenant's scooters have always been parked there. The management has a security company attend 5 times in the night and early morning hours. The managers live 5 minutes away from the rental complex and attend even on weekends for security.

Garbage shoots have been closed for about 2 years. Notices had been left for tenants to avoid throwing in bit items, kitty litter, etc., and the shoot would get plugged up. Sometimes stuff would get all over, and a small fire also occurred. For those reasons, and health reasons, the shoots were closed. Tenants had complained about the smell, but the fire was the main reason for closing it, and no other tenants have complained since it's been closed.

With respect to the notice about locksmiths, the witness testified that there have been no calls from tenants asking to be let in. Most tenants know that landlords are not responsible for that, only to ensure access to the building.

The fitness room was only closed while the keypad on the door was being changed, has been open ever since, and the tenant has never asked for the combination. The notice states how to get access.

**The landlord's second witness** is also a manager of the rental complex and testified that he does renovations and maintenance management for the landlord company and to other properties. He was also so employed when previous managers were there.

The recreation room was closed in approximately August, 2012 and a notice was posted saying that closing was due to vandalism. The exercise room and sauna are not closed but now has a keypad entry and a notice that says people living there are to call the manager for a code. No one has contacted the witness except for new tenants. The witness is not sure how people got into it previously.

### Analysis

The *Residential Tenancy Act* states:

#### **Terminating or restricting services or facilities**

- 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.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
  - (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
  - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The *Act* also defines "service or facility" under Section 1:

**"service or facility"** includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

- (a) appliances and furnishings;
- (b) utilities and related services;
- (c) cleaning and maintenance services;
- (d) parking spaces and related facilities;
- (e) cablevision facilities;
- (f) laundry facilities;
- (g) storage facilities;
- (h) elevator;
- (i) common recreational facilities;
- (j) intercom systems;
- (k) garbage facilities and related services;
- (l) heating facilities or services;
- (m) housekeeping services.

That certainly includes parking spaces and related facilities, storage facilities, common recreational facilities, and garbage facilities and related services, but does not include lack of a resident manager. There is nothing in the *Act* or the tenancy agreement that requires a manager of the rental complex to be resident in the complex. The tenant specified security concerns, but the complex is monitored by a security company. Therefore, I find that the tenant has failed to establish that a resident manager is a service or facility agreed upon and not provided, or an essential service or facility. The tenant's applications for a reduction in rent of \$30.00 per month for loss of a resident manager are dismissed.

With respect to the recreation room, the landlord's first witness testified that a notice was put up in September, 2012 stating that the room is closed. The landlord's second witness testified it was closed in about August, 2012. I find that the recreation room was a facility agreed upon in that it was a part of the tenancy.

However, with respect to the exercise room and sauna, the parties agree that all the tenant has to do is ask for a passcode to enter. I find that the tenant has done nothing to mitigate and I am not satisfied that the tenant has suffered any loss nor has the tenancy been devalued, and the tenant's application for a reduction in rent for that loss is dismissed.

Therefore, dividing the \$50.00 rent reduction claim, I find that the tenant has established that rent should be reduced by \$25.00 per month for loss of the recreation room only. I also find that amount to be reasonable considering the tenant's testimony that he used that room.

With respect to the laundry shoot, the tenancy agreement provides that garbage is included in the rent. However, the parties agree that a notice was put up warning residents to avoid dumping certain items. The landlord has an obligation to ensure the safety of the building, and having suffered a fire had every right to take measures. I am not satisfied that a garbage shoot is a material term of the tenancy agreement, and the tenant's application for a reduction in rent for loss of that convenience is dismissed.

With respect to the parking space, the tenant testified that there were no designated parking spots and upon returning from a trip his spot was gone. The tenant has a scooter, and the landlord's witness testified that scooters, motorbikes and bicycles park in that area. There is no evidence before me that the tenant ever complained to the landlord about parking there or that he wanted to retain a spot he had previously used. I am therefore not satisfied that the specific parking spot was agreed to, or a material term of the tenancy agreement, and I hereby dismiss that portion of the application.

In summary, I find that the tenant has established that rent should be reduced by \$25.00 per month from September, 2012 to date, and until the recreation room is available to the tenant. In completing the math, I find that the tenancy has been devalued by \$1,175.00 from September, 2012 to July 31, 2016, as follows:

- 2012 = 4 months;
- 2013 = 12 months;
- 2014 = 12 months;
- 2015 = 12 months;

- 2016 = 7 months to the end of July, 2016;
- for a total of 47 months @ \$25.00 = \$1,175.00.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

I order that the tenant be permitted to reduce rent for future months by \$1,275.00 until that sum is satisfied, and that the tenant be permitted to reduce rent by \$25.00 per month commencing with August, 2015 and for each month thereafter until the recreation room is available to the tenant.

### Conclusion

For the reasons set out above, I hereby order that the tenant be permitted to reduce rent for future months by \$1,275.00 until that sum is satisfied, and that the tenant be permitted to reduce rent by an additional \$25.00 per month commencing with August, 2016 and for each month thereafter until the recreation room is available to the tenant.

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: July 22, 2016

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Residential Tenancy Branch

