



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding York Hotel Inc. and Torrent Real Estate Inc. and Parkdale Enterprises
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, AAT, RR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order allowing access to (or from) the unit or site for the tenant or the tenant's guests; and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The hearing did not conclude on the first scheduled date and was adjourned for continuation. The tenant attended the hearing with an Advocate on both scheduled dates. The landlord companies were represented at the hearing by an agent on both scheduled dates, and the individual landlord was also represented by an agent on both scheduled dates. The landlords were also accompanied by legal counsel.

My Interim Decision was provided to the parties which ordered that the tenant's late evidentiary material would not be considered in this Decision and that no additional evidence would be accepted by either party between the first and second scheduled dates.

The tenant and the agent of the landlord companies each gave affirmed testimony and the parties were given the opportunity to question each other.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of services or facilities?
- Has the tenant established that the landlords should be ordered to allow access to (or from) the unit for the tenant's guests?
- 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 in August, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$463.00 per month is currently payable in advance at the end of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$220.00 which is still held in trust by the landlords, and no pet damage

deposit was collected. The rental unit is a bachelor suite, consisting of one room, and kitchen facilities are shared with other tenants. No one has provided a copy of the tenancy agreement.

The tenant further testified that on April 5, 2016 the parties had been to Arbitration and a copy of the resulting Decision has been provided. It is dated April 6, 2016 and states that the tenant and the individual landlord named in this application both attended the hearing and gave affirmed testimony. In the conclusion section it states:

"I order the landlord to allow the residents to use three garbage cans effective immediately.

"I order the landlord to clean the glass panels on the main entry doors immediately.

"I order the landlord to install a buzzer system that allows tenants to grant access to their visitors, from their rooms, within three months of receipt of this decision."

The tenant further testified that when he moved into the rental complex there was a panel on the wall and a front door buzzer, and the tenant could see from his television who was at the front door. When the current landlord took over, he removed it saying that if tenants want company, they would have to make arrangements with guests ahead of time to let them in the building. Now there is only an intercom to the building office, and no one is in the office, so no one answers it. A manager of the landlord was annoyed at people buzzing, so he disabled it. Police, ambulance and other emergency personnel can't get access.

The tenant further testified that the rental complex also had a full kitchen in a common area with a stove, oven and fridge. The tenant's rental unit only has a sink and a fridge, and all rooms are like that. The fridge doesn't hold much food and since the landlord removed the kitchen area the tenant has to attend a soup kitchen for meals.

Cable was also included in the rent and the landlord has cut the tenant's service by removing some channels and adding others that are foreign or for children. The landlord has also removed a common lounge with a computer. The tenant used the computer daily for entertainment and comradery.

The landlord did not clean the building as ordered in April, 2016, and has shown no respect for orders. The landlord has not cleaned the place up, it is in a substandard condition and the landlord seems to be required to be forced to keep it up.

The tenant has provided a list respecting the monetary claim totalling \$29,930.00. It is broken down by claims of \$5.00 per day for loss of cable from August 30, 2016, \$5.00 per day for 6 years for loss of the buzzer, \$5.00 per day for 3 years for loss of kitchen and oven facilities, \$2.00 per day for 3 years of loss of lounge facilities, \$2.00 per day for loss of computer facilities for 3 years, loss of peaceful enjoyment and loss of mail at \$5.00 per day for 5 years.

The landlord's agent (PJK) testified that the current landlords do not have a written tenancy agreement with the tenant and have not received one from the previous owner. The one provided as evidence for this hearing is an example of one that the landlords use and would use with this tenant, but he has not signed it.

The landlord's agent further testified that there was some confusion around what type of buzzer system existed previously, and the landlords fixed the one that was there. It was not a system that would allow remote entry from residents' rooms, but it had a button and a speaker, and someone could push it and it

would buzz into a box beside the manager's area, and they could communicate by intercom. When someone wanted access, they had to use a key or be let in from the inside of the building by going to the front entrance of the building and opening the door. The complex has had issues with outside people coming in, but that problem doesn't exist anymore.

The landlord's agent spoke to the previous building manager who confirmed that it was the system in place, and had a speaker so that someone at the manager's station or nearby could respond or talk at the front door of the rental complex. He also confirmed that his family owned the building since 1957 and that has always been the case. The landlord's agent also testified that he has spoken to other landlords who have the same system, and they don't have a buzzer system at all. The rental building and the buildings of the landlords called are all single room occupancy hotels converted to suites. Fire and ambulance serves all have keys, as well as service contractors and Canada Post. There is no problem for first responders to access the building.

With respect to cable, the landlord's agent testified that it was changed with notice to tenants, and he didn't think it was a material term of the tenancy agreement. A copy of the notice to residents has been provided, which is dated June 3, 2015. The landlords looked at the expenses and are committed to provide affordable housing. Cable went up and so did other services. The landlords pay more for cable than heat, so rather than cut services or raise rent, the landlords reduced the number of channels. The cable company didn't change all units right away or consistently, but the landlords are paying for the same cable package for all tenants.

The landlords also found that the kitchen and lounge areas were in contravention of a by-law because on official plans, those areas are marked as dwelling units. When the landlords took over, the lounge area had a sink and a counter. The kitchen area had a stove with no counters and a folding table. The landlords were told by the municipality that the landlords didn't have an occupancy permit and to get one the landlords had to revert the building back to the original plans. The rental rooms don't have a stove because the building isn't wired for that, but tenants have a hot plate, toaster oven, fridge, microwave and sink. If residents want, the landlords will provide a new fridge, kettle or whatever they need apart from a full stove. There is a phone available at the front desk for use by tenants, including long distance calls for no cost, and a lounge where people can meet and socialize.

The previous manager advised that the computer had been stolen and he stopped replacing it, and that the area was a privilege, not a right. When the landlords took over in 2012 there was no computer in the area.

The landlord's agent further testified that the rental complex gets cleaned every day as well as emergency cleaning when required. Tenants have a number to call for that. Carpets are cleaned at intervals. All issues that the tenant has brought up are on-going and scheduled as they come up or proactively.

Closing Submissions

The tenant's advocate submits that the loss of the kitchen, lounge, buzzer and cable have made an impact on the tenant, and the landlords don't do anything without motivation. The advocate seeks on behalf of the tenant an order that the tenant's rent be paid to the Residential Tenancy Branch until the buzzer and cable are reinstated.

The landlords' agent submits that the tenant has not suffered any damage or loss under the *Act* or the tenancy agreement. The tenant and guests can still access the building and the tenant's room, and there is no basis for a reduction in rent. The Analysis portion of the previous Decision of the director says the buzzer system broke down and it's clear that the intent of the Arbitrator was to have the previous system repaired. The previous system could not be repaired, but a security system is currently in place. It could not have been the intent of the Arbitrator to install a system that never existed in the first place. The tenant has a key, and first responders and Canada Post can access the building. If the tenant wants a guest, the tenant can make arrangements and the tenant can let them in.

With respect to cable, it is a non-essential service, not noted in the tenancy agreement, and is not enforceable.

With respect to the kitchen and lounge and, they were not on the permit, not wired for the stove and had to be removed. The landlord is obligated under Section 32 of the *Act* to provide and maintain the rental unit and common areas, but those rooms could not have formed part of the tenancy agreement because they were illegal. Wifi is included in the rent, but there was no computer when the landlords purchased the rental building.

The landlords' agent also submits that the tenant has not proven mitigation, there is no reasonable loss to the tenant, and allowing this to sit for years in order to calculate a higher loss is contrary to Section 7 of the *Act*.

Analysis

Buzzer System

I explained to the parties the legal principle of *res judicata* which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decisions to ensure that I did not make a finding on a matter that had already been heard and decided upon.

I have reviewed the April 6, 2016 Decision of the director in its entirety, and I accept the testimony of the landlord's agent that there was some confusion around the type of security system that was in place at the beginning of the tenancy. In this hearing, the tenant testified that the system that was in place at the beginning of the tenancy did not allow the tenant to open the outside door from his room, but the camera at the outside door allowed the tenant to see from his television who was buzzing so that the tenant could attend to open the door. He also testified that the system had a phone, camera and cable which the previous manager had started to disable, then the new manager disabled the rest of the system and the landlord's agent took the panel off the front door. The cable and camera are still there. The tenant has no knowledge of whether or not the system ever included a buzzer to open the door remotely.

The April 6, 2016 Decision states that, "The landlord agreed that there was a buzzer system installed in the building and that it did not get repaired after it broke down." It also states, "The landlord must have the buzzer system repaired or replaced within a reasonable amount of time. If the work is not completed within three months of receipt of this decision, the tenant is at liberty to file another application for dispute resolution." The conclusion portion respecting the buzzer system states: "I order the landlord to install a

buzzer system that allows tenants to grant access to their visitors, from their rooms, within 3 months of receipt of this decision.”

The *Residential Tenancy Act* and other legislation have methods for a landlord to use if the landlord disagrees with a Decision of the director, and none of those methods include ignoring the Decision.

The *Act* also states that:

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.

Cable

With respect to cable, I am not entirely satisfied that the package provided at the beginning of the tenancy can be construed as a material term of the tenancy agreement, which is a term that is so important to one party or another that the agreement would not have been entered into without that term. However, under subsection (2), the landlord must give 30 days' written notice, in the approved form, and must reduce the rent in an amount that is equivalent to its value. In this case, the landlord testified that tenants were given notice, but did not use the approved form and did not reduce rent. The landlord's agent testified that cable channels were reduced to prevent an increase in rent. I find that to be backwards from the legislation, and I order the landlord to comply with the *Act* by reinstating the cable as it was at the beginning of the tenancy immediately. If the landlord provides sufficient notice in the approved form and is able to establish the amount by which the tenancy is devalued by reducing the cable, the landlord may then reduce the cable service and the rent accordingly. I also find that the tenancy has been devalued by the landlords' reduction in the service since August 30, 2016.

Kitchen, Lounge and Computer

With respect to the lounge and kitchen, I am not satisfied that the tenant has suffered any loss. The tenant is able to use the kitchen facilities in his room, just like all the other tenants in the complex, and another lounge is available for use by all tenants. Further, I am not satisfied that the computer was meant to be a term in the tenancy agreement, but a courtesy by a previous landlord, and it was taken away by thefts before the new landlords took over.

Quantum

Where a party makes a monetary claim as against another party for damages, the onus is on the claiming party to satisfy that damages or a loss has been suffered, that the damage or loss suffered is a result of

the other party's failure to comply with the *Act* or the tenancy agreement, and what efforts the claiming party made to mitigate such damage or loss. The landlord's agent submitted that the tenant did not mitigate by allowing this to sit for years in order to calculate a higher loss. However, the order was made by the director on April 6, 2016, and I find that the landlord had an obligation to comply with it prior to the end of July, 2016.

No one has provided copies of the cable bills to establish the difference in service and fees charged, however the tenant claims \$5.00 per day from August 30, 2016 until it is reinstated. I find that to be excessive, being that it would result in a bill of \$150.00 per month which is well over, in my opinion, what a cable package would cost, and the tenant still has some cable. The tenant also claims \$10,950.00 for loss of the buzzer system, which I also find is excessive. The *Act* does not permit monetary claims to punish another party for a wrong-doing, but allows claims relative to the value of the loss suffered.

In the circumstances, I find that the tenancy has been devalued by \$30.00 per month from August 30, 2016, amounting to \$90.00 to November 30, 2016 for the loss of cable. I also find that the tenancy has been devalued by the landlords' failure to complete the repairs ordered after being given full opportunity to be heard. The landlord's agent submitted that the tenant didn't mitigate, waiting years before making the application in order to increase the claim. I partially agree, however the order of the director specifies that if the system is not repaired or replaced within 3 months, the tenant will be at liberty to make further application, and the tenant has done so. I find that the tenant ought to have dealt with the issue prior to the beginning of this year, and having been given the opportunity to now apply for compensation, I find that such compensation should not be for any time prior to January, 2016. I also find that the reduction in rent for the loss should not exceed \$20.00 per month, and I order that the tenant be permitted to reduce rent by that amount until such time as the landlord has complied with the April 6, 2016 order, or until otherwise ordered by the director. The reduction in rent will commence in December, 2016.

Having found that the tenancy has been devalued, I also provide to the tenant monetary compensation of \$90.00 for the loss of cable from August 30 to November 30, 2016 and \$220.00 for loss of the buzzer from January, 2016 to November, 2016. I hereby grant a monetary order in favour of the tenant in the amount of \$310.00 and I order that the tenant be permitted to reduce rent in addition to the reductions ordered herein, until that sum is realized, or may otherwise recover it.

Conclusion

For the reasons set out above, I order the landlord to comply with the *Act* by reinstating the cable as it was at the beginning of the tenancy immediately. If the landlord provides sufficient notice in the approved form and is able to establish the amount by which the tenancy is devalued by the reduction of the cable service, the landlord may then reduce the cable service and the amount of rent payable accordingly.

I hereby order the tenant to reduce rent for future months by \$30.00 per month, commencing with December, 2016 and to continue until such time as the landlord has reinstated the cable to its original service, or has complied with the paragraph above.

I further order the tenant to reduce rent by \$20.00 per month commencing with December, 2016 and to continue until such time as the landlords have complied with the April 6, 2016 order respecting the buzzer system, or until otherwise ordered by the director.

I further grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$310.00 and I order that the tenant may reduce rent for future months until that amount is recovered, or may otherwise recover it.

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: November 08, 2016

Residential Tenancy Branch