Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RR, FF, O

Introduction

This hearing dealt with a Tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "*Act*") for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement;
- an order for the landlord to comply with the Act, regulations or the tenancy agreement;
- an order to allow the tenant to deduct the cost of repairs, services or facilities from the rent;
- recovery of the filing fee paid for this application from the tenant; and
- an order for other unspecified relief.

The landlord and tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony, call witnesses and make submissions. The tenant's daughter gave affirmed testimony. She was excluded from the hearing until after she had testified. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary Procedural Matters

The tenant did not specify what other relief she was seeking in her application. As the relief claimed under "other" is unspecified, I dismiss this part of the tenant's claim.

Issue(s) to be Decided

- 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 for the landlord to comply with the Act, regulations or the tenancy agreement?
- Is the tenant entitled to an order to allow the tenant to deduct the cost of repairs, services or facilities from the rent?
- Is the tenant entitled to recovery of the filing fee paid for this application from the tenant.

Background and Evidence

The undisputed evidence established that a three year fixed term tenancy started on April 1, 2015 ending May 31, 2018 pursuant to a written tenancy agreement. The undisputed evidence of the tenant is that the current rent is $1,543.50 due on the first day of each month. The tenant's copy of the tenancy agreement was unsigned by the parties but the landlord did not object to the copy submitted by the tenant which was unchallenged.

The tenancy agreement lists the following as being included in the rent in section 3(b): water; electricity; heat; stove and oven; dishwasher; refrigerator; carpets; window coverings; laundry (free); storage; garbage collection; parking for 1 vehicle; and satellite TV receiver (1 TV only). There is also an Addendum to the tenancy agreement that indicates that utilities are included in the rent. Furthermore, the tenancy agreement states in section 3(b) that:

> *The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.*

The tenant resides with her daughter in the lower basement suite and the landlord resides in the upper suite. The tenant's application stems from the tenant's complaints that the landlord has been controlling and restricting the lights in the rental unit since August 2016. The tenant is seeking an order to stop the landlord from interfering with the lighting in the unit; a rent reduction for breach of contract; and to recover the cost of her legal fees.

The tenant's position is that electricity, specifically lighting, is included in the rent as an essential service and that this service is being restricted by the landlord. As compensation, the tenant is seeking the following:

- recovery of the cost of the tenant's legal fees in the amount of $287.23 for help she received in preparing her application; and
- a rent reduction in the amount of $500.00 for each of the months that the service was restricted starting in August 2016.

As at the date of the hearing, the tenant's total monetary claim was $2,587.23.

The landlord acknowledged that he was exercising control over the tenant's lighting and implementing restrictions. The landlord couldn't recall exactly when he started to restrict the lighting to the tenant's unit. The landlord testified that he installed an automated smart home technology system that can monitor and control lighting and electrical loads and adjust them to save power. The landlord testified that he implemented restrictions on the lighting in the rental unit to control the amount of electricity as a cost saving measure.

The landlord explained that the system has a motion detection sensor that can detect which rooms are occupied at any given time. The automated system turns out the lights when it detects no motion in the room. The system controls the amount of time that the lights are on before the system shuts them off.

The landlord's position is that the utility usage included in the rent is for reasonable use only and that the tenant isn't entitled to go beyond a reasonable usage. The landlord alleged that the tenants are wasting energy by leaving lights on in rooms that they are not using. The landlord testified that the tenant's electrical usage was out of the ordinary and far in excess of that of the previous tenants.

The tenant denies the landlord's allegations that she is purposefully wasting electricity.

The landlord also complained about the tenant's use of electrical heaters in the unit as he was concerned that it is a fire hazard. The landlord said that electrical heaters are not permitted in the unit and that they contribute towards the increased costs of the electrical bill. The landlord claimed that the tenant had five electric heaters in the unit.

The tenant testified that she had only two electrical heaters in the unit which were placed in areas of the unit which weren't insulated and therefore required more heat. The tenant denied that the heaters were a fire hazard.

The matter of the landlord's complaint about the tenant's excessive use of electricity was raised at a previous hearing on March 7, 2016 dealing with the tenant's application disputing a rent increase. The file number for the previous hearing is indicated on the cover page for ease of reference. The landlord attempted to impose a rent increase to offset the tenant's alleged unreasonable use of electricity. The Arbitrator determined that it was not a valid increase. The tenant testified that the landlord took control of the lighting when he wasn't successful with his previous application.

The tenant testified that in August 2016 the landlord started controlling the living room lights in the rental unit. The tenant testified that the lights are set to turn off every thirty to forty minutes. The landlord testified that the lights are set to turn off every 45 minutes. The tenant testified that when watching tv or reading, someone has to get up to turn the lights back on every time they go off.

The tenant testified that in September 2016 the landlord then started controlling the lights in the two bedrooms followed by the two bathrooms. The tenant and her daughter testified that the bedroom and bathroom lights are set to turn off after 10 minutes of no activity. The landlord essentially agreed stating that these lights turned off between 10-15 minutes. The tenant testified that her and her daughter have both experienced the lights going out while in the shower so that they have to get out of the tub in the dark to turn on the lights. The tenant is worried about her and her daughter's safety when this happens. The tenant testified that the lights in her and her daughter's bedroom and bathroom were deactivated so that they were not able to be turned on. The tenant and her daughter testified that lights in one of the bedrooms and bathrooms were still not activated at the time of the hearing.

The tenant testified that a couple of weeks prior to the hearing the landlord started to control the dimness of the light and reduced the level of lighting by 50%. The landlord acknowledged dimming the lights. The tenant testified that she was required to purchase lamps to compensate for the decreased level of light in the unit.

The tenant also testified that she lives at the back of the house down a 90 foot gravel walkway. The tenant testified that the lights are not working creating another safety issue as the pathway is in darkness. When the lights were working, the tenant said the landlord shut them off at 7:30 p.m. every night. The landlord's position is that this lighting isn't included as part of the services required to be provided in the tenancy agreement and so the outside lighting of the pathway was discontinued.

The tenant submitted copies of correspondence exchanged between her and the landlord which are summarized below.

On September 27, 2016 the landlord sent a letter to the tenant informing the tenant that cost cutting measures have been implemented and that an automated system would be turning the lights off in rooms where the lights are on an extended amount of time. The landlord requested that the tenants discontinue the use of heaters citing them as a fire hazard. The landlord gave the tenants two options: discontinue the use of heaters and excessive use of the power to bring the electrical bill down to a normal level; or pay for the electricity used above and beyond normal usage. The tenants were given one week to choose an option or the landlord would issue a two month notice.

On October 2, 2016, the landlord sent the tenants another letter indicating that he has decreased the amount of time the lights are on in response to what he claims are the tenant's efforts to bypass the energy savings by purposely turning the lights on and leaving the room. The letter indicates that if the tenants continue to waste energy purposely, further restrictions will be imposed.

On October 24, 2016, the tenant sent the landlord a letter informing him that her daughter's bathroom lights won't come on asking the landlord if he could fix the problem. The landlord responded by way of letter explaining that the light was disabled because the room was being lit when not in use. The landlord indicated that he would reset the light and that if the system detects the light on while the room is not in use, the energy savings features will be enabled. The landlord reiterated that the amount of time the light is on will decrease if the tenants continue to try to bypass the energy savings system.

On October 29, 2016 the tenant sent the landlord another letter informing him that her daughter's bathroom ceiling lights will not turn on and asking the landlord to cease interfering with their lighting. The tenant also informed the landlord that the outside pathway lights were not working either and that it was a safety issue as that side of the house is in darkness.

On October 31, 2016 the landlord responded by letter indicating that he re-enabled the lights in the bathroom and that if the system disables them again, he will not fix them complaining that the tenant is wasting his power by lighting unoccupied rooms. The landlord also indicates that he will be charging a fine of $25.00 per heater each month they are in use and that the automated system can now tell when the heaters are in operation.

The tenant's daughter's testimony was consistent with the tenant's testimony described above.

Analysis

Based upon the testimony provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

The tenancy agreement states at section 3(b) that:

> *The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.*

Section 27 of the Act 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.

Pursuant to Policy Guideline #22, an "essential" service is one which is necessary, indispensable, or fundamental. I find that electricity, specifically lighting, is an essential service as it is fundamental and necessary to the tenant's use of the rental unit as living accommodation.

The landlord acknowledged that he has been restricting the lighting in the tenant's unit. I accept the testimony of the tenant that the restrictions started in August 2016. This was not disputed by the landlord although the landlord couldn't recall exactly when it started. The correspondence exchanged between the landlord and tenant supports the testimony of the tenant that the landlord has been aggressively restricting the tenant's lighting.

While the landlord argued that the utility usage included in the rent is for reasonable use only and that it does not give the tenant a right to go beyond a reasonable usage, I find that the tenancy agreement does not include any such provision that would support the restrictions of the service by the landlord. I further find that the landlord has failed to prove the tenant's use of electricity has been unreasonable in any event.

The landlord also acknowledged discontinuing the lighting of the pathway that leads to the tenant's front door. The landlord's position is that this outdoor lighting was not part of the services provided for in the tenancy agreement. I find that there is nothing written in the tenancy agreement that identifies the outside pathway lighting as an exception to the electricity included in the rent. I find that the landlord provided outdoor lighting at the start of the tenancy and that this service is part of the utilities included in the rent.

Pursuant to section 30 of the *Act*, a landlord must not unreasonably restrict access to residential property by the tenant of a rental unit that is part of the residential property. I accept the tenant's testimony that it is unsafe to navigate a 90 foot gravel pathway in the dark to get to the front door of her unit. I find that the exterior lighting is necessary for the tenant to be able to safely access her unit in the dark such that it is as essential as the interior lighting. Accordingly, I find that the exterior pathway lighting is essential in providing the tenant unrestricted access to the residential property. Therefore, I find that the exterior lighting also qualifies as an essential service and the lack of exterior lighting in the circumstances amounts to an unreasonable restriction on the tenant's access.

Based upon the foregoing, I find that the landlord is in breach of section 3(b) of the tenancy agreement and s.27 of the *Act* by restricting the lighting in the tenant's unit as well as the exterior pathway lighting. Under no circumstances is a landlord allowed to terminate or restrict a service essential to the tenant's use of the rental unit as living accommodation.

Pursuant to section 62 of the *Act*, I find that the tenant is entitled to the following Orders for the landlord to comply with the Act and the tenancy agreement:

1. that the landlord comply with the *Act* and the tenancy agreement by removing the restrictions placed on the tenant's lighting immediately so as to provide the tenant with uninterrupted use and control of the lighting in her unit;

2. that the landlord is prohibited from using the energy saving system in the tenant's unit effective immediately for the remainder of the tenancy;

3. that the landlord is required to maintain exterior pathway lighting, without any restrictions, which the landlord must have in place by no later than **January 31, 2017 by 1:00 p.m.**

4. that if the landlord does not comply with the above terms by **January 31, 2017** by **1:00 p.m.,** the tenant will be entitled to a full rent reduction for each month the landlord is in breach of these terms starting February 1, 2017.

5. that if the tenant becomes entitled to a full rent reduction, the landlord will be required to file an application with the Residential Tenancy Branch to cancel the rent reduction by proving that he has complied with the above terms.

6. that the landlord comply with section 27 of the *Act* in the future. Failure to do so could lead to a recommendation for an administrative penalty under the *Act*. The maximum penalty for an administrative penalty under section 94.2 of the *Act* is $5,000.00 per day and may be imposed for each day the contravention or failure continues.

It is up to the party claiming compensation to provide evidence to establish that compensation is due. I am satisfied that there is sufficient evidence to establish that the tenant is entitled to compensation for damage or loss under the *Act*.

Section 67 of the *Act* entitles the tenant to compensation for damage or loss that results from a party not complying with this *Act*, the regulations or a tenancy agreement. Pursuant to Policy Guideline #16, damage or loss includes loss of a service provided under a tenancy agreement.

Policy Guideline #16, address the criteria for awarding compensation for damage or loss. An Arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward. An Arbitrator may also consider the value of the damage or loss that resulted from a party's non-compliance with the *Act*, regulation or tenancy agreement. The amount arrived at must be for compensation only, and must not include any punitive element. The value of the loss is established by the evidence provided.

Pursuant to section 65(f), If there is a finding that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, an Arbitrator may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Based upon the tenant's Monetary Order Worksheet, the tenant's position is that the value of the tenancy without the ability to control the lighting is the equivalent of $500 in reduced rent. The evidence established that the tenant lost the ability to control the use of lighting in her unit. The tenant gave evidence as to the extent of the lighting restrictions and the impact it had on her use of the rental unit. I find that the tenant's claim for a rent reduction in the amount of $500.00 is reasonable and supported by the evidence. Therefore, I grant the tenant a $500.00 reduction for past rent for each of the

months of August, September, October, November, December 2016; and January 2017. Accordingly, the tenant is entitled to a monetary order in the amount of $3,000.00.

I dismiss the tenant's claim for the cost of her legal fees in the amount of $287.23. I find that the tenant is not entitled to recover this amount from the landlord as legal fees do not fall under the definition of damage or loss in accordance with Policy Guideline #16.

As the tenant's application is successful, the tenant is entitled to recovery of the $100.00 filing fee for her application from the landlord.

Pursuant to section 65(f) of the *Act*, I authorize the tenant to deduct the amount that the landlord owes the tenant from any future rent due, starting February 1, 2017.

While the tenant doesn't refer to any other service restrictions besides lighting in her application, there is mention made in her written material that she wants the landlord to provide uninterrupted heat as well. I find that there was insufficient evidence from the tenant about the heat in the unit to make any findings. Although I make no orders regarding heat to the unit, I caution the landlord that it is a breach of the *Act* to restrict heat to the tenant's unit for any reason.

Conclusion

The tenant's claim is successful with the exception of the tenant's claim for the cost of legal fees.

I **ORDER** that the landlord comply with the *Act* and the tenancy agreement by removing the restrictions placed on the tenant's lighting immediately so as to provide the tenant with uninterrupted use and control of the lighting in her unit;

I **ORDER** that the landlord is prohibited from using the energy saving system in the tenant's unit effective immediately for the remainder of the tenancy;

I **ORDER** that the landlord is required to maintain exterior pathway lighting, without any restrictions, which the landlord must have in place by no later than **January 31, 2017 by 1:00 p.m.**

I **ORDER** that if the landlord does not comply with the above terms by **January 31, 2017** by **1:00 p.m.,** the tenant will be entitled to a full rent reduction for each month the landlord is in breach of these terms starting February 1, 2017.

I **ORDER** that if the tenant becomes entitled to a full rent reduction, the landlord will be required to file an application with the Residential Tenancy Branch to cancel the rent reduction by proving that he has complied with the above terms.

I **ORDER** the landlord to comply with section 27 of the *Act* in the future. Failure to do so could lead to a recommendation for an administrative penalty under the *Act*. The maximum penalty for an administrative penalty under section 94.2 of the *Act* is $5,000.00 per day and may be imposed for each day the contravention or failure continues.

Pursuant to section 67 of the *Act*, the tenant is granted a monetary order in the amount of $3,100.00, which includes a rent reduction for the months of August 2016 to December 2016 and the filing fee, which must be served on the tenant as soon as possible.

The tenant is authorized to deduct the award of $3,100.00 from future rent due in satisfaction of this award.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 20, 2017

Residential Tenancy Branch