



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      PSF, LRE, AAT, OLC, ERP

### Introduction

This hearing was set for 11:00 a.m. on this date, via teleconference call, to hear the tenant's application for orders for the landlord to make emergency repairs; provide services or facilitates required by law; orders for the landlord to comply with the Act, regulations or tenancy agreement; to suspend or set conditions on the landlord's right to enter the rental unit; and, permit access to the property for the tenants' guests. The tenants appeared at the hearing but there was no appearance on part of the landlord.

The tenants testified that the hearing package was sent to the landlord via registered mail on April 10, 2018. The tenant orally provided a registered mail tracking number and a search of the tracking number confirmed that registered mail was sent on April 10, 2018 and that the landlord did not pick up the registered mail. The tenants also stated that they told the landlord they were going to the Residential Tenancy Branch and the landlord's response to them was that it would do them no good.

Section 90 of the Act deems a person to be in receipt of documents five days after mailing, even if the person refuses to accept or pick up there mail. Accordingly, I found the landlord was deemed served with notification of this proceeding and the tenants' Application for Dispute Resolution and I continued to hear from the tenants without the landlord present.

### Issue(s) to be Decided

1. Is it necessary and appropriate to issue orders to the landlord?

### Background and Evidence

The tenants testified that their tenancy started in April 2017 and they paid a security deposit of \$1,200.00. Their monthly rent was set at \$1,200.00 payable on the first day of every month. The landlord did not prepare a written tenancy agreement.

The rental unit is one of two ground floor rental units and the landlord resides on the upper floor of the house.

The tenants stated that when their tenancy started there were three people residing in the rental unit: the two tenants appearing before me and a girlfriend of one of the tenants. The girlfriend moved out and another person joined the two remaining tenants. More recently, the tenants had a visitor stay with them for approximately 2 weeks. The tenants stated that landlord demanded the rent be increased to \$2,000.00 per month but the tenants were not agreeable to such an increase. The tenants testified that in response the landlord did the following things on April 7, 2018:

- Terminated the electricity for the heat, hot water, washing machine, stove and fridge, outlets and lights with the exception of two lights; and,
- Terminated the Wi-Fi service.

In an effort to demonstrate their claims, the tenants had photographs of the fridge and stove without any lights coming on despite turning on the dials on the stove and opening the fridge and freezer doors; the Wi-Fi network being unavailable to them; and, of water running from their bathroom faucet.

The tenants stated that the rental unit is very cold without heat and their food in the fridge spoiled. In addition, they have not been able to cook at home and have had to purchase meals from restaurants. When the unit was particularly cold one night the tenants spent the night at a fast food restaurant.

In addition, the tenants testified that the landlord has attempted to interfere with the tenants' right to have visitors in the rental unit; the landlord has not been delivering their mail to them; and, the landlord has entered the unit without their consent or giving the tenants a 24 hour written notice.

The tenants stated that they paid their rent for April 2018 and have not yet paid rent for May 2018.

The tenants seek orders for the landlord to comply with the Act so that their electricity, heat, hot water, use of the washing machine, fridge and stove and other plugs and lights; and, Wi-Fi are restored. The tenants also seek orders for the landlord to give them their mail; stop entering their unit illegally; and, stop interfering with their guests and visitors.

The tenants are concerned that the landlord is illegally trying to increase their rent and that the landlord may even throw their possessions out of the rental unit and lock them out.

### Analysis

Section 2 of the Residential Tenancy Act applies to all tenancy agreements concerning residential rental units in the Province, even if the rental unit violates a local zoning or land use by-law, as provided in Residential Tenancy Policy Guideline 31. Only living accommodation that falls under section 4 of the Act is exempt from the Act. I was not provided any information to suggest this living accommodation is exempted from the Act pursuant to section 4.

Section 5 of the Act provides that a landlord and a tenant may not contract out of the Act or otherwise try to avoid the Act. The definition of “tenancy agreement” includes those that are entered into orally. Therefore, an oral tenancy agreement concerning an unauthorized rental unit remains enforceable, subject to the provisions of the Act; and, the parties to such an agreement are bound to comply with the Act.

Upon consideration of the unopposed evidence before me, I provide the following findings and reasons.

I accept that the tenants before me entered into an oral tenancy agreement with the landlord for the subject rental unit for the monthly rent of \$1,200.00 payable on the first day of the month starting in April 2017 and that the services provided to the tenants as part of their agreement include: electricity, heat, water, hot water, fridge, stove, washing machine and Wi-Fi. I also accept that the tenants paid a security deposit in the amount of \$1,200.00. In the absence of a written tenancy agreement, this decision serves as a written record of the terms of tenancy.

I find the landlord has violated the requirements of the Act in several ways, including:

- failure to provide the tenants with a written tenancy agreement as required under section 13 of the Act;
- collecting a security deposit in excess of one-half of the monthly rent in violation of section 19 of the Act;
- termination of services and facilities including: electricity, heat, hot water, use of the fridge, stove and washing machine, and Wi-Fi which is a violation of section 27 of the Act;
- entering the rental unit without the tenant's consent or giving the tenants a 24 hour written notice which is a violation of sections 28 and 29 of the Act; and,
- trying to restrict the tenants' ability to have occupants or guests in the rental unit in violation of section 30 of the Act.

Below, I have reproduced certain portions of the sections described above for the parties' reference:

#### **Requirements for tenancy agreements**

**13** (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

#### **Limits on amount of deposits**

**19** (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

### **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.

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

**Tenant's right of access protected**

**30** (1) A landlord must not unreasonably restrict access to residential property by

(a) the tenant of a rental unit that is part of the residential property, or

(b) a person permitted on the residential property by that tenant

[My emphasis underlined]

Upon hearing from the tenants, I am of the view that the above described violations are egregious and an attempt to coerce the tenants to pay a significantly greater amount of rent or move-out of the rental unit. The landlord's tactics are highly illegal and are not tolerable. The landlord hereby put on notice that in addition to the orders I have made with this decision, the landlord may also be subject to **Administrative Penalties** issued by the Director of the Residential Tenancy Branch.

In light of the above, I find it necessary and appropriate to make the following ORDERS to the LANDLORD:

**I ORDER THE LANDLORD TO do the following IMMEDIATELY upon receipt of this decision:**

1. Fully restore the electricity for the rental unit and any other areas of the property the tenants have access to including electricity for: heat, hot water, washing machine, fridge and stove, and all other lights and plugs.
2. Fully restore the Wi-Fi service for the tenants.
3. Give the tenants all of their mail without delay.
4. Do not enter the rental unit except where the tenant has given the landlord consent to enter or the landlord has given the tenants a proper 24 hour notice to enter in accordance with the requirements under section 29(1)(b).
5. Do not unreasonably interfere or restrict the tenants' right to have guests, visitors or occupants in the rental unit.
6. Repay the tenants the overpaid security deposit in the amount of \$600.00.
7. Repay the tenants the rent paid from April 7, 2018 through April 30, 2018 in the amount of \$960.00 [calculated as \$1,200 x 24/30 days].

8. Do not require the tenants to pay any rent until such time all of the services described in order #1 and #2 have been fully restored.
9. Ensure any rent increase required is accomplished in a manner that complies with Part 3 of the Act (sections 40 through 43).
10. Do not remove the tenants' possessions or change the locks to the rental unit unless the landlord has a court order to do so.

In keeping with order #8 above, **I authorize the tenants to not pay any rent until such time the services and facilities described in orders #1 and #2 have been fully restored.** Once the services are fully restored rent will become payable on a per diem basis after the date of restoration. As an example: if the services and facilities are fully restored on May 10, 2018 rent would become payable for the period of May 11 – 31, 2018 (i.e.: 21 days' worth of rent) and every month thereafter.

In recognition that the tenants have overpaid the security deposit by \$600.00 and I have ordered the landlord to repay \$960.00 of April's rent to the tenants, I provide the tenants a Monetary Order for \$1,660.00 (including recovery of the \$100.00 filing fee they paid). The landlord may pay this amount to the tenants to satisfy the Monetary Order or the tenants may satisfy the Monetary Order by withholding rent otherwise payable to the landlord or a combination of both. To use the above example to illustrate: even though the landlord would be entitled to per diem rent for May 11 – 31, 2018 assuming services were restored on May 10, 2018, the tenants may withhold that rent and a portion of the subsequent month's rent until such time this Monetary Order is satisfied. Should the tenancy end before the Monetary Order is fully satisfied the tenants may enforce the Monetary Order by filing it in Provincial Court to enforce as a judgement against the landlord.

Should the landlord terminate services or facilities to the tenants again, or fail to comply with my orders, or do something else that is in violation of the Act, the tenants are at liberty to file another Application for Dispute Resolution and the tenants may seek additional orders AND additional compensation from the landlord.

### Conclusion

The landlord has violated several sections of the Act and I have issued several orders to the landlord with this decision.

I have authorized the tenants to withhold rent until such time the landlord fully restores services and facilities to the tenants as described in orders #1 and #2. Once services



and facilities are fully restored rent will become payable the following day on a per diem basis and then every month thereafter.

The tenants have also been awarded recovery of the overpaid security deposit, recovery of a portion of the rent paid for April 2018, and, recovery of the filing fee in the sum of \$1,660.00. The tenants have been provided a Monetary Order for this amount and it may be satisfied by payment from the landlord or withholding rent otherwise payable to the landlord, or a combination of both.

The tenants are at liberty to make another Application for Dispute Resolution to seek additional orders and compensation if the landlord fails to comply with my orders, terminates services or facilities again, or does something else in violation of 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: May 03, 2018

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Residential Tenancy Branch