



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OLC RP

Introduction:

Both parties attended (the landlord by authorized representatives who are hereinafter called 'the landlord') and gave sworn testimony. The tenant said that they served the Application for Dispute Resolution personally on an adult in the home of the landlord and the landlord acknowledged receipt. I find that the landlord is served with the Application according to section 89 of the Act.

The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) That the landlord obey the Act and provide services of heat and water pursuant to section 27;
- b) That the landlord provide them with copies of utility bills and an accounting of amounts charged and paid;
- c) That the landlord repair and maintain the property as required by sections 32 and 33 of the Act; and
- d) That the landlords cease harassing them.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that they lack services due to act or neglect of the landlord? Have they proved that the landlord is not maintaining the property as required and is harassing them?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced in July 2011, that monthly rent is \$850 plus half of the electricity and gas bill and a security deposit of \$425 was paid. An overpayment of the security deposit was refunded.

The tenant raised a number of issues in this hearing as follows:

1. She has not had free access to the outside faucet since the Dispute in February 2017;
2. The landlord has charged her twice for a utility bill.
3. The automatic sensor light on her door does not work properly. She wants more light. She wants light on her parking area. She explained that when she or her children use the alley at the side of the house, there is no light.
4. There is not sufficient heat in winter. She needs more heat in the morning between 8 and 9 a.m. Sometimes it is too hot in the evening when she comes home but her children are cold in the morning.
5. The landlord is harassing them.

This is at least the fifth Application for Dispute heard between these parties. Although the tenant commented on the other outcomes where she was sometimes unhappy with the results, I explained to her that I could only deal with the facts in the present hearing and would appreciate her limiting herself to them. She complied.

The landlord said the outside faucet closest to the tenant was covered in 2015 to prevent freezing. There is another outside faucet by the corner and the tenant has never requested them to uncover the one closest to her. She has acquired a lot more plants without permission (now about 12).

The tenant invited me to look at the large utility bills in 2017; she said she only saw the bills a few times and after that trusted the landlord and just paid him. The landlord's representatives said their father who is the landlord always showed her the bills since 2017 when he realized he should show them. The tenant said once when she protested, he checked his calculations and gave her a refund. She would like to see copies of the bills and get receipts for her payments to make sure she is not overcharged. The tenant referred to the landlord's attempt to charge her for the water utility. The landlord said the tenant had verbally agreed to pay her share of the water bill but then she contacted the Residential Tenancy Branch and based on their opinion, they refunded the money to her.

The landlord said the automatic sensor on the light is not working properly; it still turns on but the tenant has to turn it off herself from inside. The landlord said they never turn the light off and the automatic sensor light fixture will be fixed. The home is being renovated and they are in the process of getting permits. The tenant said it is dark in the alley; she needs a light for her children are frightened when they put out the garbage. Sometimes there are vagrants there. The landlord said they applied to the

City to install a light in the alley; other alleys have city lights but they City refused one to this alley. The tenant agreed she has a light on her car now.

The landlord said there is light along the pathway to the tenant's car as illustrated in a photograph in evidence and light on the tenant's car. However, the tenant chooses to go around the dark back alley and around the house to her unit. The daughter of the landlord finds the children look in windows on the way and this disturbs the peaceful enjoyment of her boyfriend and her who live in the lane house. The tenant said the lighted path and steps are slippery so they use the alley. The landlord denies this and states the path is gravel and fine to use. The tenant said they use flashlights and light from their phone to go along the alley now and the 'mother' watches them and this frightens her children. The landlord said when they have the permits, the contractors will include fixing the light on the automatic sensor for the tenant.

Respecting the heat issue, the landlord supplied evidence of a plumber who attended to fix a leak complaint in the tenant's unit in February 2018. The landlord and he noted the tenant has her windows open in winter even when there is snow. The tenant agreed and said her children have health issues that require the windows to be open. The landlord said the heat is never turned off, they have the same heating system and it has been set the same for 20 years, they have even blocked their vents on their main floor to exclude the cooking smells from downstairs. That means the tenant is getting even more heat. The tenant said it is between 8 and 9 a.m. in the morning that they are cold. The landlord responded by pointing out that it gets colder at night and if she leaves her windows open at night, her unit will be colder in the morning. They are not at fault for her choices.

I have read and considered all the documentary and oral evidence given at the hearing. However, only the evidence relevant to the issues and decision is quoted. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

An applicant for Dispute Resolution alleging fault of the other party must prove the following according to section 7 of the Act:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The tenant has not claimed compensation in her Application. However, she claims the landlord is at fault for not supplying certain amenities or services and is harassing them.

In respect to her claim of denial of free access to the outside faucet closest to her, I find the weight of the evidence is that this faucet was covered in 2015 and the tenant has provided insufficient evidence to prove that she ever requested access to it and was denied. Furthermore, there is another outside faucet she may use even if it is more inconvenient. I dismiss this portion of her claim.

I find insufficient evidence of her claim of overpayment of a utility bill. However, I find it reasonable that the landlord should supply the tenant with a copy of the utility bill together with his calculation of her portion of it. He should also supply her with a receipt for payment of it. I will order that she is entitled to this and hopefully this will avoid further disputes on utility payments. I note that section 46 of the Act states that if a landlord supplies the copy with a written demand to pay it and if it is not paid for more than 30 days, the landlord may treat it as unpaid rent and serve a 10 Day Notice for unpaid rent to claim it. I find the landlord mistakenly charged her for water utility relying on a verbal agreement but he refunded her payment when she contested it. This is no longer an issue.

Regarding outside lighting, I find the landlord has supplied adequate lighting for her pathway and car. I find the landlord's evidence credible as it is well supported by their forthright testimony and photographs of the areas in question. I find the tenant's reason for choosing to use a dark alley way to access her unit is not credible. I find she should discourage her children from doing this as she or her guests must not disturb the peaceful enjoyment of other residents by peering in windows of their homes or cars. I find the landlord plans to have the automated light fixed as soon as possible but are delayed by the permit process. I find they are not neglecting their duties to maintain the property.

I find insufficient evidence that the landlord is not supplying sufficient heat in winter. I find the landlord's evidence credible that the cooler morning air in her unit is caused by her leaving her windows open at night. Although the tenant stated good reasons to have her windows open for her children's health issues, I find she has not proved her unit lacks sufficient heat. I find the landlord's credibility well supported by the plumbing contractor's observations in February 2018 when there was snow on the ground and the tenant had her windows open.

The tenant also requested me to order the landlord not to issue her a Notice to End Tenancy if she has to leave for another country for an emergency related to her mother. The landlord said they had no intention of doing so but were afraid she was manipulating the system to avoid letting contractors in to do renovations and she also might abuse such an order by using it to leave for a long period for a non emergency.

I find the landlord has issued a number of Notices to End Tenancy that were found to be invalid for different reasons; I find on examining the circumstances, they were not issued maliciously but were genuine mistakes as to the requirements for each kind of notice. I find I do not have authority (or jurisdiction) to forbid a landlord to issue valid Notices to End Tenancy. They may be issued under sections 46 (unpaid rent or utilities), 47 (for cause) and 49 (for landlord occupancy, renovations and some other reasons). I take note the landlord has said in the hearing that they would not issue a Notice to End Tenancy in the tenant's absence provided it was a genuine emergency which was not prolonged beyond 6 weeks and was not just to delay contractors in gaining access for renovations.

I find section 29 of the Act provides a landlord may enter the tenant's premises even if the tenant is absent and does not give consent providing they abide by section 29(1) (b) of the Act and give the requisite notice and reasons. The landlord may enter without notice only if an emergency exists and the entry is necessary to protect life or property (section 29(f)).

The tenant has claimed 'harassment' a number of times in her documents. I find there is no evidence of harassment in the actions of the landlord in this Dispute. I find the weight of the evidence is that the landlord is being accommodating to the increasing demands of the tenant.

In summary, I find insufficient evidence that the landlord is not maintaining the property in accordance with the Act. I find the weight of the evidence is that he repairs items

(such as the plumbing) diligently when notified (for example in February 2018) and is proceeding to repair and renovate the property as soon as the requisite permits are obtained. His diligence is noted in requesting testing for asbestos to protect the health of the tenants and workers before proceeding.

Conclusion:

For the above noted reasons, I dismiss the majority of the claims in the application of the tenant. The filing fee was waived.

To give effect to the problems and promises discussed in the hearing and the tenant's obligations, **I HEREBY ORDER:**

1. **The landlord must supply a copy of each bill for gas and electric to the tenant with a calculation of her portion and must supply a receipt when she pays it.**
2. **The landlord must repair the automated light at the tenant's unit so it responds to the sensor as soon as the contractor has obtained the permits and can schedule the repair work.**
3. **If the tenant has to leave for another country for an emergency related to her mother and her rent is being paid, the landlord will not issue a Notice to End Tenancy (if necessary) under sections 47 or 49 for at least six weeks after her departure.**

I HEREBY ORDER THE TENANT to obey section 29 of the Act and provide access to her unit whether or not she is present, providing the landlord gives her the requisite 24 hours (or more) Notice which may be put on her door.

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: June 21, 2018

Residential Tenancy Branch