



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, RR, FFT

Introduction

On September 17, 2018, the Tenant applied for a Dispute Resolution proceeding seeking an Order that the Landlord comply pursuant to Section 62 of the *Residential Tenancy Act* (the “*Act*”), seeking an Order that the Landlord provide services or facilities pursuant to Section 62 of the *Act*, seeking an Order to reduce the rent pursuant to Section 65 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package, including his evidence, to the Landlord by registered mail and the Landlord confirmed that he received this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

The Landlord advised that he served his evidence to the Tenant late and this was not in compliance with Rule 3.15 of the Rules of Procedure as he had trouble keeping up with the amount of Applications that the Tenant has filed. As such, I have excluded and not considered the Landlord’s evidence when rendering this decision. However, he was able to provide testimony with respect to this evidence during the hearing.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an Order for the Landlord to comply?
- Is the Tenant entitled to an Order for the Landlord to restore a service or facility?
- Is the Tenant entitled to a rent reduction and compensation for the termination of a service or facility?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord stated that the tenancy started on December 1, 2012 as a “favour” to the Tenant. The tenancy commenced as an unwritten, month to month tenancy. All parties agreed that rent was established at \$1,362.00 per month, due on the first day of each month. However, based on a Dispute Resolution decision dated August 31, 2018, rent for September 2018 onwards was ordered to be reduced to \$1,257.00 per month. The Tenant was also allowed to deduct a one-time credit of \$210.00 from a future month’s rent. A security deposit was not paid.

Both parties acknowledged that they have been involved in multiple Dispute Resolution proceedings and the issues between the parties are ongoing.

The Tenant advised that a Dispute Resolution decision of September 14, 2018 went against the Landlord and in response, the Landlord shut off the Tenant’s washing machine and an electrical outlet. That same day, he emailed the Landlord to request that these facilities be reinstated. The Landlord acknowledged eliminating these facilities and stated it was a safety precaution due to the Tenant’s use of a space heater. The Tenant speculated that the Landlord’s actions are retaliatory or harassing in nature. He is seeking restoration of the washing machine and electrical outlet and compensation in the amount of \$15.00 per day from September 14, 2018 until a

decision is rendered with respect to this issue. The Tenant is also seeking \$20.00 per day from September 14, 2018 until a decision is rendered with respect to this issue because the Landlord did not provide the proper written notice to restrict or terminate such a service or facility. Finally, the Tenant is seeking a one-time rent reduction of \$1,500.00 as a devaluation of the tenancy due to the Landlord's repeated actions. The Tenant referenced past decisions that he relied on to support his submissions.

The Landlord confirmed that he shut off the washing machine and electrical outlet citing the need for "clean power" as he has a laboratory in his house. He advised that when he terminated the Tenant's use of the clothes dryer, he "should have turned off the washing machine as well", but he did not expect that the Tenant would continue to use the washing machine once his ability to use the dryer was eliminated. The Landlord advised that he would not turn the clothes washer back on because the Tenant is using space heaters to dry his clothing. The Landlord admitted that his actions were in direct contravention of the *Act*; however, there was a clear reason for why he had terminated these facilities. He stated that he is trying to run a "business/laboratory" out of his house and he would be fine if the Tenant used the facilities on a "normal basis"; however, the Tenant's excessive use of the facilities causes the Landlord's electrical system to be erratic and unsteady.

Analysis

With respect to the Tenant's reliance on previous decisions to support his arguments, I find it important to note that I am not bound by or obligated to follow any past decisions. This decision is based upon consideration of the evidence before me and I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the issue of termination or restriction of services or facilities, Section 27(2) of the *Act* states that the Landlord may terminate or restrict a service or facility with 30 days' written notice using the approved form **and** by reducing 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.

With respect to the issue of monetary compensation, I find it important to note that Policy Guideline # 16 outlines that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not

occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

The consistent and undisputed evidence before me is that the use of the washing machine was a facility that was provided as part of the tenancy up until the point it was terminated. The Landlord acknowledged that he did not provide the approved notice to advise the Tenant that the washing machine and electrical outlet would be terminated, nor did he comply with the *Act* by compensating the Tenant in a value that is commensurate with the loss of these facilities. Furthermore, despite the Tenant's written request to remedy this issue, the Landlord confirmed that he did this intentionally, knowing that it was in contravention of the *Act*, and he submitted that he would not rectify this issue.

I find that the Landlord's method, reasoning, and justification for terminating these facilities to be unreasonable, retaliatory, and entirely contrary to the *Act*. Based on the totality of the evidence before me, I am satisfied that the Landlord's intentional and egregious actions do not comply with the *Act*, and as a consequence, the Tenant has established that he is entitled to monetary compensation in the amount of one current month's rent. As such, I find that the Tenant may withhold a total amount of **\$1,257.00** from future rent payments until satisfied.

Furthermore, I make no Order against the Landlord to restore the use of the washing machine or electrical outlet; however, as the Landlord has continued to terminate facilities contrary to the *Act*, and as the Tenant has suffered a loss due to the unlawful actions of the Landlord, I am satisfied that the Tenant is entitled to a rent reduction in the amount of **\$457.00** per month. Therefore, rent as of November 1, 2018 will be established at **\$800.00** per month going forward. If the Landlord elects to restore the full use of the washing machine and electrical outlet, the rent reduction will no longer apply and rent will return to a monthly amount of **\$1,257.00**; however, the one month's compensation is still owed due to the Landlord's repeated non-compliance.

As a note, the Landlord is now on notice that continued non-compliance with the *Act* may result in Administrative Penalties being recommended.

As the Tenant was successful in his claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application by withholding this from a future month's rent as well.

Conclusion

The new amount of rent for November 2018 and going forward shall be established at **\$800.00** per month. The Tenant is also allowed to withhold **\$1,257.00** and the **\$100.00** filing fee from a future month's rent.

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: October 29, 2018

Residential Tenancy Branch