



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT PSF RP RR**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order for the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62;
- An order for the landlord to perform regular repairs pursuant to section 32; and
- An order to reduce rent for repairs/services/facilities agreed upon but not provided pursuant to section 65.
- Authorization to recover the filing fees from the landlord pursuant to section 72;

Both the tenant and the landlord attended the hearing. The landlord was represented by the property manager, CF ("landlord"). The landlord confirmed receipt of the tenant's application for dispute resolution. The tenant did not file any documentary evidence. The landlord testified she sent her evidence to the tenant by registered mail on April 18, 2019 and provided a Canada Post tracking number, listed on the cover page of this decision. The tenant denies receiving the evidence, however admits to not being at home to receive her mail. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue

The tenancy agreement provided as evidence does not show the property manager as a named party. The property manager CF testified she manages the property on behalf of the owner and is properly named on the application for dispute resolution.

Issue(s) to be Decided

Is the tenant entitled to:

- An order for the landlord to provide services or facilities required by the tenancy agreement or law?
- An order for the landlord to perform regular repairs?

- An order to reduce rent for repairs/services/facilities agreed upon but not provided?
- An authorization to recover the filing fees from the landlord?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The fixed term tenancy agreement was signed on June 9, 2011 with a commencement of July 1, 2011, becoming a month to month tenancy at the conclusion of the 6 month fixed term. Rent was set at \$2,700.00 and is currently \$2,780.00 per month. The tenancy agreement does not include any reference to a hot tub being included in the rent, however the landlord did not dispute the rental unit has included a hot tub since the commencement of the tenancy.

The tenant provided the following testimony. One of the best features of the rental unit is the hot tub and for the past two years, the hot tub has been out of use. She has personally spent time and money to get it fixed. In October of 2018, the landlord advised her the hot tub is beyond repair and that a new hot tub will be purchased to replace the broken one. The owner of the property is unwilling to replace it until she personally takes a look at it but has not yet come to do so, as she lives outside the province.

The tenant seeks a rent reduction in the amount of \$100.00 per month for each month she is deprived of the use of the hot tub and seeks an additional \$100.00 per month for the past 24 months she says it has been out of use. To ensure the hot tub was being repaired, the tenant has taken time off work, had friends and family attend technician visits and communicated extensively with the property manager.

The landlord provided the following testimony. The first time she heard of the problem was on April 9, 2018 when the tenant advised her by text message, provided as evidence. When it was disclosed to her, the landlord hired spa technicians and electricians to come fix the hot tub on several occasions. The landlord submitted invoices from the spa technicians and electricians as evidence.

Service	Date	Invoice amount
Spa repair	April 18, 2018	\$250.32
Spa repair	May 11, 2018	\$335.15
Spa repair	June 8, 2018	\$668.22
Electrician	July 19, 2018	\$1,321.87
Spa repair	October 4, 2018	\$1,390.74

After the October visit from the spa technician, and on his advice, the landlord decided it is time to replace the hot tub. The cost of a new hot tub was quoted by the spa technician is approximately \$10,000.00. The landlord has not replaced the hot tub yet,

as the owner of the property wants to view the old one before replacing it. It is currently unknown when the property owner is coming to view it.

Analysis

- Landlord perform regular repair

Section 32 requires a landlord to:

provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

While the landlord has been performing repairs to the hot tub and has paid almost \$4,000.00 to repair it since being informed of the issues, the hot tub still remains out of use. Despite this, the residential property is still functional as it complies with health, safety and housing standards required by law. The rental unit is suitable for occupation by the tenant, despite now lacking the hot tub originally enjoyed by the tenant at the beginning of the tenancy.

I do not find the landlord in contravention of section 32 of the *Act* and I dismiss this portion of the tenant's claim to have the hot tub repaired.

- Landlord provide services or facilities required by the tenancy agreement or by law

Section 27(1) of the *Act* states 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.

Section 27(2) of the *Act* states 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.

The hot tub is not essential to the tenant's use of the rental unit as a living accommodation and is therefore not a material term of the tenancy. Despite this, the actions of the parties in spending several hours and thousands of dollars to trying to repair it satisfies me that both parties were in agreement the hot tub was an important service or facility in the rental unit that was terminated or restricted, albeit through no fault of either party.

As the facility of the hot tub has been terminated or restricted without the reduction in rent required pursuant to section 27(2)(b), and since the landlord testified the hot tub will

be replaced in the future, I order the landlord provide a replacement hot tub in accordance with section 65 of the *Act*.

- Rent reduction for restricted or terminated service

As stated earlier, Section 27(2) of the *Act* allows a landlord to terminate a service or facility if she (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.

The landlord did not dispute the tenant's claim that the hot tub was a primary reason for choosing to rent this accommodation and that she considers it an important term of the tenancy. The tenant pays what she considers to be a premium rent for this property which has always had a hot tub since the beginning of the tenancy. Although she claims the issue has been ongoing for two or more years, the tenant has not provided any evidence to prove the landlord had any knowledge of the issue prior to April 2018. I find her ineligible for compensation prior to that date. Likewise, by the testimonies of the parties, and the invoices of repair provided by the landlord, I am satisfied the landlord has been taking the steps required to provide the tenant with the hot tub between April 2018 and October 2018. Because the landlord was performing the repairs requested by the tenant, the tenant's claim for compensation for rent between April 2018 and October 2018 is dismissed.

The parties agree that in October 2018, the landlord agreed to provide the tenant with a new hot tub however the replacement has been delayed by the landlord's failure to see the original one, her own pre-requisite. By doing so, the landlord has effectively restricted the facility to the tenant without giving written notice to restrict the facility or reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement, contravening section 27 of the *Act*.

As the landlord did not dispute the monthly amount sought for the rent reduction, I find the tenant should be compensated for the restricted use of the hot tub in the amount of \$100.00 per month between the months of October, 2018 and May, 2019, a period of eight months. I award the tenant a monetary award in the amount of \$800.00. The tenant is at liberty to deduct \$800.00 from a future rent payment in accordance with section 65 of the *Act*.

The issue of the un-fixed, un-useable hot tub remains an issue for the tenant and its replacement continues to be delayed by the landlord. In accordance with section 65 of the *Act*, the tenant is authorized to reduce her rent by the amount of \$100.00 per month to \$2,680.00 per month until the landlord replaces the hot tub.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The tenant's application for the landlord to perform regular repairs is dismissed.

The landlord is to provide services or facilities pursuant to the tenancy agreement. The landlord is to replace the hot tub in accordance with section 65 of the *Act*.

The tenant is authorized to reduce her rent in the amount of \$100.00 per month until the hot tub is replaced, in accordance with section 65 of the *Act*.

The tenant is awarded monetary compensation in the amount of \$900.00 which represents the rent reduction from October 2018 to May 2019 together with the filing fee. In accordance with section 65 of the *Act*, the tenant may deduct \$900.00 from a future rent payment.

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 10, 2019

Residential Tenancy Branch