



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

FFT LAT LRE MNDCT OLC PSF RR

### **Introduction**

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

- Authorization to recover the filing fee from the landlord pursuant to section 72;
- Authorization to change the locks to the rental unit and an order restricting the landlord's right to enter the rental unit pursuant to section 70;
- A monetary award for damages or loss pursuant to section 67;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- An order that the landlord provide services or facilities pursuant to section 65; and
- Authorization to reduce rent for services or facilities agreed upon but not provided pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by counsel.

As both parties were present service of documents was confirmed. The parties each confirmed receipt of the other's materials. Based on the testimony I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### **Issue(s) to be Decided**

Is the tenant entitled to recover their filing fee from the landlord?  
Should the tenant be authorized to change the locks to the rental unit?  
Should the landlord's right to enter the rental unit be restricted?  
Is the tenant entitled to a monetary award as claimed?  
Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?  
Should the landlord be ordered to provide services or facilities?  
Is the tenant entitled to reduce rent for services or facilities agreed upon but not provided by the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This tenancy began in February 2018. The monthly rent is \$1,700.00 payable on the 1<sup>st</sup> of each month. A security deposit of \$850.00 was paid at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a detached home. The tenancy agreement provides that included in the rent is a: 30'x 30' shop. The agreement also includes a clause that the tenant is responsible for the utilities for the whole building.

The tenant submits that the clause providing that the tenant is responsible for utilities simply refers to the fact that the tenant was to put the utility accounts under their name and does not mean that the tenant is responsible for paying them on his own. The landlord disputes that interpretation and says that the clause means that the tenant is responsible for paying the rent in full for the building.

The landlord said that the tenant added the clause in the tenancy agreement that included in the rent is a 30' x 30' shop. The landlord said that the tenant added this clause without the landlord's authorization and the landlord did not initial to agree to this amendment. The landlord said that nevertheless, the tenant has been allowed to use the shop for storage of their items.

The tenant submits that they have not had exclusive use of the shop on the rental property. The tenant testified that while they have access to the shop they have not been able to fully use the space as the landlord's possessions are stored in the shop. The tenant seeks a monetary award for the loss of exclusive use of the shop, reimbursement for the utilities paid for the full house and the cost of travel to the Branch, photocopying costs, registered mail and filing fees.

### Analysis

The burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The parties disagree on much of the facts and I find I must make a finding of credibility. I have considered the testimonies of the parties, the documentary evidence in support of their respective positions and whether their submissions are consistent with what a reasonable person would do under similar circumstances. Overall, I find the landlord's testimony to be more credible than that of the tenant. The landlord provided consistent testimony which was consistent with how a reasonable person would act. Much of the tenant's testimony was not supported in the documentary evidence, consisted of accusations against the landlord and the witnesses who provided sworn statements, involved issues unrelated to the matter at hand and were based on conjecture and suspicions.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The parties disagree on how the clauses contained in the tenancy agreement are to be interpreted. The tenant states that despite any clauses in the tenancy agreement the tenant is not responsible for payment of the utilities for the whole property. I find that the tenant's interpretation of the clause is not reasonable. The clause states: "Tenant responsible for the whole house Re: Hydro Fortis Gas". I find that the plain reading of this clause is that the tenant is responsible for payment of the listed utilities. I do not find the tenant's interpretation that they were only meant to put the accounts under their name but not responsible for payment to be logical or reasonable. I do not find the tenant's evidence by way of signed statements from others who say they were present when the agreement was being entered to be persuasive. I find that the most reasonable interpretation of the clause is that that the tenant is responsible for payment

of utilities in full for the whole property and there is no basis for the tenant to seek reimbursement from the landlord. Accordingly, I dismiss this portion of the tenant's claim.

The landlord testified that the clause in the tenancy agreement stating that the use of a 30'x30' shop was added unilaterally by the tenant and is not a term of the agreement. The tenant testified that there was an agreement allowing exclusive use of the space and provided a signed witness statement from an individual who was present when the discussion occurred. The tenant disputes the landlord's affidavit evidence from the other residents of the building stating that they understood that the landlord maintained exclusive use of the shop.

I find that in the present circumstance with conflicting testimony and written evidence the tenant has not met their evidentiary burden on a balance of probabilities. I find that the tenant has not established that they are entitled to exclusive use of the shop and that the landlord has failed to provide this space. I therefore dismiss this portion of the tenant's application.

I find that the tenant has not established that there has been a breach by the landlord or that the landlord has entered the rental unit in contravention of the Act, such that an order is required. The tenant's evidence on this point consists of conjecture and accusations without basis. I find that the tenant has not shown sufficient evidence in support of this portion of their application and it is consequently dismissed.

As the tenant's application was not successful the tenant is not entitled to recover the filing fee from the landlord.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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 16, 2019

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Residential Tenancy Branch