Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RR MNDCT FFT PSF OLC

Introduction:

Both parties attended and gave sworn testimony. The tenant said that they served the Application for Dispute Resolution on the landlord and he agreed he received it. 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) A monetary order pursuant to Sections 7, 27, 32,and 67 for not providing receipts for utility bills and other monies paid to them and for not protecting their peaceful enjoyment;
b) To order the landlord to provide the services agreed to but withdrawn such as internet, cable and laundry,
c) To obtain a reduction in rent of $462.50 for facilities agreed upon and not provided pursuant to section 27;
d) To obtain an ongoing rent rebate until facilities are restored; and
e) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that they have suffered damage and loss and withdrawal of services due to act or neglect of the landlord? If so, to how much compensation have then proved entitlement? Are they entitled to recover the filing fee?

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 April 2018 with a verbal agreement to pay rent of $1300 per month and a security deposit of $650. This was a very contentious hearing; although both parties gave sworn testimony, they accused each other of lying. They disagree as to what was included in the monthly rent. The tenant states free laundry, internet and cable were included and the landlord denies this. They also disagree on the percentage of the hydro each was

to pay. The landlord says they were each to pay 50% and the tenant maintains this was 40%. The tenant submitted much documentary evidence with many pages of texts she wrote recounting noise and other problems she had with the landlord which she states significantly disturbed her peaceful enjoyment contrary to section 28 of the Act.

The parties agree that this is an older home, built in 1911 according to the landlord, and there is little or no insulation. The landlord lives upstairs and the tenant in the basement suite. The landlord stated the home has about 2200 sq. ft. with about 1100 of that upstairs and 950 in the suite and 50% share of the hydro was reasonable. He said he has never shared his laundry with previous tenants and tenants got their own internet and cable. He said there was a friendly relationship developed with this tenancy for the tenant's grand daughter became friendly with his children and they would run up and down the stairs visiting each other. When he wanted to go out, the downstairs tenant said she would look after his children and this freed him up a lot as he had a new girlfriend. The tenant agreed that she did this and wanted no money for it. When he went out of town once, the tenant asked to use his laundry and he gave her the key; he also allowed her to use his router and internet cable due to the babysitting arrangement.

Both parties agreed that things changed dramatically in November 2018. The landlord had a letter from his bank showing his mortgage was being increased dramatically and he told the tenant he would raise the rent by $50 a month. He thought the legislated raise in 2018 was 4% but has since found out it was 2.5% and he did not know that rent should not be raised until a year has passed. The parties began seriously disputing with each other and the tenant states the landlord cut off their access to laundry on December 7, 2018 and to their internet on December 28, 2018. They submit a list of expenses for their costs of using the laundromat and a bill for internet and cable calculated since December 2018. The landlord said those items were not included in the tenancy agreement. Both parties agree that the tenant has paid a total of $1055 for hydro but the tenant claims a refund of overpayment as it should be only 40% of the bills.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

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 onus is on the tenant in this matter to prove on a balance of probabilities that they have suffered loss due to the landlord's violations of the Act or their tenancy agreement. Since there was no written agreement and the landlord contradicts the tenant's evidence, I find credibility is a major issue. Since the tenant had internet, cable and laundry costs included in their tenancy from April until December 2018, I find the tenant's evidence more credible and I prefer it to the evidence of the landlord. Although he contended it was part of a friendly relationship as some babysitting was involved, I find it unlikely that such a relationship developed immediately. I find it more likely that the services were withdrawn after the dispute about a rent increase in November 2018. Section 27 of the Act provides:

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.

I find the weight of the evidence is that the landlord violated section 27 of the Act by withdrawing laundry, cable and internet services from December 7th (laundry) and December 28th (cable and internet). I find the tenant contracted with the cable provider for service costing $85 + tax monthly and is entitled to be compensated for January to the end of March, 2019 (3 months). Regarding her claim for laundry, I find she has provided no receipts; she claims for 23 loads of laundry done in 18 days in December, 10 in January, 18 in February and 26 in March, totalling 77 loads. I note that tenants often have laundry facilities twice a week and 3 loads twice a week might be expected; in 3 months this would be 72 loads so I do not find their claim excessive. I find them entitled to recover $464.50 (which includes 3 taxi rides for $11 or less) for the loss of their laundry facilities to the end of March 2019. I give them leave to reapply for further compensation if the landlord does not allow them access to the laundry facilities for the months until they leave.

Regarding the hydro bill, I find the evidence of the tenant more credible that they were to pay 40% of the total, not 50% as the landlord claims. I find their credibility is supported by the fact that the downstairs suite is about 900 sq. ft. and the landlord uses the rest of the 2200 sq. ft. home according to the evidence.
The bills submitted showed $329.92 April-May, 2018, $239.36 (May-June 2018), $217.47 (June –Sept 2018), $269.31 (Sept-Nov.), and $474.31 (Nov.-Jan 10, 2019) for a total of $1530.37. Of this, I find the tenant was responsible for 40% or $612.14. I find the evidence of both parties is the tenant has paid $1055 which allegedly takes into account up to April 2019. However, the bills were only available online to January 10, 2019 as a further bill for Jan. 11-March 12, 2019 was not decipherable. So I am unable to calculate if any refund may be due the tenant. I give the tenant leave to reapply for any compensation for overpaid hydro based on their share being 40%. Apparently the tenant is moving soon in response to a two month Notice to End Tenancy. Although the tenant has requested that services be restored, I find this may be pointless as they are vacating soon and they have leave to reapply for compensation for those services which the landlord does not restore and provide until the end of the tenancy.

The tenant also applies for compensation of 10% of their rent from December 2018 to the present for loss of their peaceful enjoyment. I find section 28 of the Act provides that a landlord must protect the peaceful enjoyment of the tenant. I find the weight of the evidence is that this is an old home with little or no insulation of sound. The tenants describe loud stomping, loud music and the playing of drums by the kids and the landlord to deliberately disturb them after the rent dispute in late November. Apparently the tenant called the Police 31 times according to the landlord but he received no citations or tickets. I find the tenant had no police reports or other independent third party witnesses. I find insufficient evidence to support this claim of the tenant. I find this is an old house where noise travels easily and is to be expected in a shared living arrangement. Heavy footsteps, children running and music sounds are normal and might be expected and it might be impossible to protect the tenant from these normal noises. However, I find the landlord in playing the kids' drums and allowing them to play them inside in such a space should have know this was very likely to disturb the peaceful enjoyment of his tenants living in a basement unit and by not curtailing these activities, I find he violated section 28 of the Act.. I find them entitled to a rebate of 3% of their rent for December to March 2019 which totals $117 for this disturbance.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover filing fees for this application. I give them leave to reapply for further compensation for loss of the cable and internet and laundry facilities calculated from April 1, 2019 until they leave, unless the landlord chooses to restore them. I give them leave to reapply for a refund of any overpaid hydro also based on their share of 40% a month.

Internet/Cable $85+8.45 tax month (x3)	280.35
Withdrawal laundry facility	464.50
Disturbance of their peaceful enjoyment	117.00
Filing fee	100.00
Total Monetary Order to Tenant	**961.85**

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 07, 2019

Residential Tenancy Branch