Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OLC, MNDCT, FFT

Introduction

This hearing was scheduled to deal with a tenant's application for orders for repairs and compliance with the Act, regulations or tenancy agreement. The tenants subsequently submitted an Amendment to seek monetary compensation for loss of use of the sundeck and washer/dryer and to specifically request repair/replacement of the sundeck and for the landlords to supply a washer/dryer. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

At the commencement of the hearing, the tenant was accompanied by her sister. The tenant stated that her sister was a witness to service of documents and the need for certain repairs. I excluded the tenant's sister from the proceeding with instruction to wait elsewhere so that she could not hear the proceeding until such time she was called to testify. I was informed that the tenant's sister left the room; however, she was not called to testify during the remainder of the hearing.

I confirmed the parties had received the hearing documents and evidence of the other party. Although the submissions and evidence were not served strictly in accordance with the service provisions of the Act, having been satisfied both parties were in receipt of the other party's packages I deemed them sufficiently served pursuant to the authority afforded me under section 71 of the Act and I admitted the evidence for consideration in making this decision.

The landlord raised an issue with respect to the video evidence submitted by the tenants. The landlord pointed out that it is possible the video provided to me could be

altered and not the same as the video provided to the landlords. I recognized that there is always such a possibility but given the landlord's concern, I stated I would describe the content of a video with the landlords during the hearing so that the landlords could be assured I was viewing he same video they had. During the hearing, I described a portion of one video aloud. The video was taken whilst a woman was in the back yard trying to measure the area for a design of the backyard and in the video I could see a make-shift enclosure with furniture and the tenant repeatedly asking the landlord what to do with the furniture. During the hearing the tenant stated that most of the possessions (ie: furniture) seen in the video belonged to the basement suite tenant. The landlords did not raise any concern that what I was seeing/hearing was altered.

I noted that the parties have been to dispute resolution proceedings multiple times prior to this hearing. Nevertheless, I explained the hearing process to the parties and permitted the parties to ask questions about the process. I instructed the parties to not interrupt while I was hearing from the other party. During the hearing, the tenant interrupted the landlords' testimony and I cautioned her about such conduct. While the landlords' were finishing up their oral submissions, the tenant interrupted for the third time, despite my instructions and cautions to her. Considering the tenant's failure to comply with my instruction and considering the hearing time was nearly expired, I informed the parties that I was ending the hearing at that point and I would make a decision taking into account what I had heard up to that point.

On another procedural matter, the parties informed me that they were scheduled to have another hearing on June 10, 2019 to deal with two Notices to End Tenancy (file numbers referred to on the cover page of this decision). Since the tenants has sought repair issues, including a significant repair to the sundeck, I informed the parties that I would wait for the outcome of the June 10, 2019 hearing before deciding whether to issue orders for repairs. A decision for the June 10, 2019 hearing was issued on June 12, 2019 and the Arbitrator cancelled the Notices to End Tenancy with the effect the tenancy continues at this time. Accordingly, I have issued orders to the landlords with a view that the tenancy is continuing.

Considering the video I had seen and described above and the obvious on-going conflict involving the parties before me, near the end of the hearing I strongly suggested to the tenant that she refrain from inserting herself in issues that involve the landlords and the other tenant residing on the property. Since the tenancy is slated to continue at this time, I suggest that it is even more paramount that the parties try to limit their conflict where unnecessary and that includes the tenant's involvement in issues that do not pertain to her or her tenancy as inserting oneself in unnecessary conflict is not

helpful in finding a way to foster a more successful tenancy relationship with the landlords.

Issue(s) to be Decided

1. Is it necessary and appropriate to issue repair orders or orders for compliance to the landlords?
2. Are the tenants entitled to monetary compensation in the amount claimed for loss of a service or facility or use of the rental unit?

Background and Evidence

The tenancy started on October 1, 2012 and the tenants are currently required to pay rent of $1,455.00 on the first day of every month. The rental unit is a three bedroom unit on the upper floor of a house. The lower suite is also tenanted.

Washer/Dryer

It is undisputed that the landlords removed the stacking washer/dryer from the rental unit on April 28, 2019 and it has not been replaced yet. I was provided consistent testimony that the landlord sent a *Notice Terminating or Restricting a Service or Facility* dated May 3, 2019 (the Notice) to the tenants with respect to removal of the washer/dryer and the Notice did not provide for any rent reduction. The Notice was received by the tenants on May 8, 2019.

The tenants seek replacement of the washer/dryer and until such time it is replaced the tenants seek compensation of $120.00 per month for loss of this service or facility. The tenant submitted that they are a family of six and they do a lot of laundry. The tenant submitted that they have been going to a coin-operated laundry facility and they do not have receipts to demonstrate the cost incurred but the tenant was of the position it is expensive to do laundry in this manner.

The landlords testified that they determined it was not economically worth it to repair the washer/dryer that was in the rental unit and they do not have the funds to provide the tenants with a replacement washer/dryer.

The landlord explained that the tenancy was set to end on May 31, 2019 due to a *1 Month Notice to End Tenancy for Cause* so, despite the fact the laundry machines were removed from the rental unit, the landlords did not provide for a rent reduction for the

last month of tenancy. The landlord confirmed that the tenants paid the full amount of rent for May 2019 and June 2019. During the hearing, the landlords acknowledged that loss of use of the laundry machines warrants a rent reduction; however, the landlords were of the position the tenants' request for $120.00 per month was excessive. The landlords were of the position the tenants are entitled to compensation of approximately $40.00 per month. The landlords were of the position that their tenancy agreement provides for only two occupants, not six, and that laundry facilities are not that expensive for two people.

I noted that the tenancy agreement submitted to me did not contain a restriction on the number of occupants that may occupy the rental unit and there was no addendum indicated on the tenancy agreement. The landlord confirmed this to be accurate but claimed that a couple of months after the tenancy started the parties executed an addendum that included a term limiting the number of occupants. The landlord acknowledged that she did not include a copy of the addendum as evidence for this proceeding.

Deck

The tenants submit that the sundeck is rotting and falling apart and in late January 2019 they received a letter from the landlords advising them to not use the deck. Then, in late April 2019 the landlord posted a sign indicating the deck was for emergency exit only. The tenant stated that the tenants have not been using the deck since receiving the letter in January 2019.

The tenants request an order for the deck to be repaired or replaced and compensation equivalent to $100.00 per month for each month they have suffered a loss of use of the deck until it is repaired or replaced. The tenant submitted that the deck is approximately 15 ft. x 9 ft. based on measurements made by the landlords' realtor and drawing of the floor plan of the house. The tenants estimated that based on square footage the monthly rent would for that space would amount to $168.00 per month but since it is a deck the tenant's reduced the claim for compensation to $100.00 per month.

The landlords testified that the tenants were complaining about the condition of the deck when they issued the letter in January 2019; however, the landlords are of the position the deck is safe. The landlords explained they issued the letter in January 2019 for liability purposes but that they have seen the tenants using the deck since the letter was issued. The landlords also stated that they have had several contractors to the property to view the deck and have been making preparations to replace the deck; however, they

claim they are unable to get a building permit to replace the deck due to the City becoming aware that the property is illegally tenanted at this time.

The tenant interrupted the landlord to state that the City's inspection notice of April 30, 2019 was altered and that someone else wrote on the bottom of the inspection notice to indicate a deck permit would not be issued until the owner occupies the property. The hearing was ended shortly after this statement was made, due to the repeated interruption of the tenant, and as explained in earlier in this decision.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Washer/dryer

Section 1 defines "service or facility" to include laundry facilities. Below, I have reproduced the definition of "service or facility".

> **"service or facility"** includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:
>
> (a) appliances and furnishings;
> (b) utilities and related services;
> (c) cleaning and maintenance services;
> (d) parking spaces and related facilities;
> (e) cablevision facilities;
> (f) laundry facilities;
> (g) storage facilities;
> (h) elevator;
> (i) common recreational facilities;
> (j) intercom systems;
> (k) garbage facilities and related services;
> (l) heating facilities or services;
> (m) housekeeping services;

Upon review of the tenancy agreement, I note that section 3 of the tenancy agreement states that laundry (free) is provided by the landlords as part of the monthly rent

obligation. Accordingly, I find that the washer/dryer in the rental unit was a service or facility that the landlords were obligated to provide to the tenants.

Section 27 of the Act imposes restrictions and requirements on the landlord's ability to terminate or restrict services or facilities. Section 27 provides as follows:

> **Terminating or restricting services or facilities**
>
> **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 was not provided evidence to suggest the provision of laundry facilities is essential to the tenant's use of the rental unit as living accommodation or a material term of the tenancy agreement. Therefore, I find that subsection 27(2) applies.

The landlords did give the tenants a *Notice Terminating or Restricting a Service or Facilit*y but with less than 30 days of advanced written notice and the landlords did not provide for any rent reduction. I find the landlords' Notice did not comply with the requirements of 27(2)(b). Even in circumstances where the tenancy is set to end in the near future, as submitted by the landlord, the tenant would still be entitled to a rent reduction for the remainder of the tenancy. During the hearing, the landlord appeared to acknowledge the obligation to provide a rent reduction but disputed the amount of compensation sought by the tenant. Therefore, I proceed to consider the tenants' request for a rent reduction.

The tenants requested compensation of $120.00 for each month they are without laundry machines. The landlords proposed that $40.00 per month was more reasonable. Upon consideration of the parties' respective submissions, I am of the view the tenants' request for $120.00 per month is more reasonable. Not only is there a cost

involved in using machines at a coin-operated facility but there are also travel time and costs, and the inconvenience of having to wait at a laundromat while doing laundry. I also accept that some families do varying amounts of laundry and I accept the tenants' submission that their family does a significant amount of laundry since they have children. Therefore, I grant the tenants' request for compensation of $120.00 per month for the months of May 2019 and June 2019 as requested.

I further authorize the tenants to reduce their future monthly rent by $120.00 for each month they are without laundry facilities. Should the landlords replace the laundry machines with functional machines at a future date; the rent will no longer be reduced. Where laundry machines are replaced part way through the month, the rent reduction shall cease starting the following month. For example: if replacement laundry machines are installed in mid-July 2019 the rent reduction would not apply to the rent obligation due for August 2019.

If/when the landlords intend to replace the laundry machines, the landlords shall be required to mail to the tenants a Notice of Entry that provides for the date and time for installation of the washer/dryer and provide for sufficient mailing time and 24 hours of advance notice. Upon receiving the Notice of Entry the tenants must not interfere with the landlords' attempts to install the washer/dryer. The landlords are responsible for hooking up the washer/dryer so that it is ready for use by the tenants.

Deck

The parties were in dispute as to whether the deck is safe to use. Upon review of the photographs supplied by the tenants, it appears that the stairs and supporting boards for the deck are rotten. The landlord pointed me to photographs she had provided for the hearing scheduled for June 10, 2019. I have looked at those photographs; however, I find they were taken further away from the tenant's photographs and do not offer the same detail. In contrast, the tenant's photographs were taken much closer and were accompanied by a schematic to demonstrate where the photographs were taken. Accordingly, I have given much greater evidentiary weight to the tenant's photographs over the landlords' photographs.

The landlords had pointed to a notation on the bottom of the City's inspection notice of April 30, 2019 that indicates the deck flooring is safe. The tenant was of the position that notation was made by someone other than the building inspector. While I am not a hand-writing expert and my review of the hand-writing is not conclusive, it appears the writing at the bottom of the inspection notice is slightly different than the writing that

appears above the inspector's signature. Even if the deck flooring is safe, the issue raised by the tenant is the integrity of the supporting structure, including where the railings attach, and the stairs which have obvious rot and deterioration in the photographs provided to me.

Also of consideration is the landlords had notified the tenants in writing not to use the deck; the landlords posted signs on the sliding glass door and the stairs indicating the deck should not be used except in the case of emergency; the landlords have had multiple contractors inspect the deck and have sought a building permit from the City to repair/replace the deck.

All of the above considered, I find the preponderance of the evidence leads me to accept the tenants' submission that the deck is not safe for use as a sundeck and the tenants have been deprived of this component of the rental unit since late January 2019.

The tenants' requested a repair order for the deck and I am of the view that request is warranted in keeping with a landlord's obligation to repair and maintain a rental unit in accordance with section 32 of the Act. Section 32(1) of the Act requires a landlord to:

> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
>
> [My emphasis underlined]

By way of this decision, **I ORDER the LANDLORDS to repair or replace the sundeck, including the supping structure and railings, and the stairs coming off the sundeck so that they comply with health, safety and housing standards required by law and are suitable for ordinary use as a sundeck with stairs to the back yard. The landlords must undertake the necessary and appropriate steps to comply with this Order without undue delay.**

The tenants seek compensation equivalent to $100.00 per month based on square footage of the deck in comparison to the rental unit and then reduced that sum to reflect the space is an exterior space. I find the tenant's calculation to be rational and

reasonable. Therefore, I find the tenants entitled to compensation for loss of use of a portion of the rental unit for the months of February through June 2019 at the rate of $100.00 per month, or $500.00.

I further authorize the tenants to reduce their monthly rent by $100.00 for each month the deck is not repaired/replaced. The rent reduction will cease starting the first month after the deck and stairs are repaired/replaced and suitable for ordinary use as a sundeck.

Filing fee

As provided in section 72 of the Act, I award the tenants recovery of the $100.00 filing fee they paid for this application.

Monetary Order

In keeping with all of the above, I provide the tenants with a Monetary Order in the sum calculated as follows:

Loss of laundry – May 2019 and June 2019	$240.00
Loss of deck – February 2019 through June 2019	500.00
Filing fee	100.00
Monetary Order for tenants	$840.00

The tenants are authorized to deduct $840.00 from a subsequent month's rent to satisfy the Monetary Order issued with this decision and in doing so the landlords must consider the rent to be paid. If the tenancy ends before they recover the amount awarded, the tenants may enforce the unsatisfied portion of the Monetary Order by filing it in Provincial Court (Small Claims).

Conclusion

I have awarded the tenants' compensation totalling $840.00 for loss of laundry facilities and loss of use of the sundeck up to and including the months of June 2019. The tenants are authorized to deduct this amount from a subsequent month's rent. If the tenancy ends before the award is fully satisfied the tenants may enforce the balance outstanding by way of the Monetary Order that I provide to the tenants with this decision.

For months after June 2019, the tenant are authorized to reduce their monthly rent payment by $120.00 per month until such time they are provided functional laundry machines and the tenants are authorized to reduce their monthly rent by $100.00 until such time the sundeck and stairs are repaired or replaced and suitable for ordinary use as a sundeck.

In making the authorized deductions from rent, the landlords must consider the rent to be paid and may not try to end the tenancy for unpaid 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: June 19, 2019

Residential Tenancy Branch