Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, PSF, RR, FFT

Introduction

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

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlords to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

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.

Tenant RL said that they sent the landlords copies of their dispute resolution hearing package by registered mail. Landlord RK (the landlord) and Landlord DK's agent (the agent) testified that the only material provided to them by the tenants was addressed to both landlords in one package. The agent testified that they were representing Landlord DK, because their mother, Landlord DK, had experienced a stroke some time ago, and was unable to represent themselves adequately at this hearing. The landlord also said that copies of the tenants' written evidence package was handed to them as declared by Tenant RL. The landlord and the agent both had received and reviewed the tenants' documents.

In accordance with the powers delegated to me pursuant to paragraph 71(2)(c) of the *Act*, I find that while the tenants have not satisfactorily demonstrated that they served individual hearing packages and written evidence packages to both landlords pursuant to sections 88 and 89 of the *Act*, the tenants' dispute resolution and written evidence packages have been sufficiently given or served for the purposes of this *Act*. As the tenants confirmed receipt of the landlords' written evidence, I find that they have been duly served with the landlords' written evidence in accordance with section 88 of the *Act*.

At the hearing, the agent confirmed that they had included information within their written evidence that pertained to both the tenants' application and their own application that was filed after the date when the landlords application could be considered as a cross-application at the current hearing. This hearing is scheduled to be heard by the Residential Tenancy Branch in September 2019 (see File number noted above). Both parties had considerable difficulty separating the tenants' application from the matters identified in the landlords' application.` Throughout this hearing, both parties had to be reminded frequently that the only matters properly before me were those identified in the tenants' application.

Issues(s) to be Decided

Is the provision of access to the landlords' washer and dryer a material term of this tenancy agreement? Should orders be issued requiring the landlords to provide access to the washer and dryer in this property, services and facilities agreed upon when this tenancy began? Are the tenants entitled to a monetary award for losses arising out of this tenancy? Are the tenants entitled to a monetary award for a rent reduction in the value of their tenancy agreement? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, documents, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. As was noted above, both parties experienced difficulty in separating the issues identified in the tenants' application for dispute resolution and claim from the more general issues in dispute with respect to this tenancy and contained within a significant portion of the

evidence supplied by the landlords for this hearing. The principal aspects of the tenants' claim and my findings around each are set out below.

The parties signed a month-to-month tenancy agreement for a rental unit within the landlords' dwelling, enabling the tenants to take occupancy of this rental unit on October 14, 2017. Monthly rent was initially set at $1,250.00, which was subsequently increased to $1,300.00. The landlords continue to hold the tenants' $625.00 security deposit paid when this tenancy began.

The tenants' application of May 6, 2019 requested a monetary award of $350.00 for the loss in the value of their tenancy and the harassment they alleged that they have experienced as a result of the landlords' efforts to restrict their use of the shared laundry facilities in this home. The tenants also referenced other issues that the tenants believed constituted harassment, in their application for a reduction in their monthly rent.

According to the terms of the tenancy agreement (the Agreement), the relevant portion of which was entered into relevant evidence by the tenants, laundry was to be "shared one day weekly." The landlord testified that he drafted this portion of the Agreement, and that the tenants fully understood that this meant that the tenants would be allowed a period during one day each week whereby they could access the washer and dryer in a portion of the landlord's home containing the laundry facilities. The landlords interpreted this provision in the Agreement to mean that the tenants were allowed a five hour time period once per week to do their laundry. The parties provided conflicting evidence with respect to whether the time period identified for the tenants' access to the laundry facilities in this home was by mutual agreement as the landlord and the agent claimed, or at the landlords' direction, as the tenants maintained. The tenants maintained that the time periods selected on Mondays did not fit the tenants' work schedule well. Tenant RL said that since they work until 4:30 each weekday, the landlords' identification of a five hour time period, initially from 10:00 a.m. until 3:00 p.m. on Mondays when Tenant AL was not working, and later from 3:00 pm until 8:00 p.m., and finally from 2:00 p.m. until 7:00 p.m. on Mondays did not enable him sufficient time to wash and dry his work clothes.

Tenant AL testified that they had to alter their work schedule by reducing their work hours by one hour so that they could leave work to be home by 2:00 p.m. instead of 3:00 p.m. each Monday, in order to ensure that their laundry could be done in time to accommodate the five hour time period allowed by the landlord. Tenant AL provided sworn testimony and written evidence that the door to the laundry room was locked when they arrived home on Monday, May 6, 2019. Tenant AL said that the landlords

had not informed them that the door would be locked that day. Tenant AL said that they were seeking a monetary award to recover one hour of wages that they lost on each of May 6, May 13 and May 20, as a result of the landlords' arbitrary decision to change the hours of access to the laundry facilities to 2:00 p.m. from 3:00 p.m. Tenant AL said that their hourly wage at that time was $12.77 per hour.

The agent testified that Tenant AL was misrepresenting what happened on May 6, as the agent said that they saw Tenant AL accessing the laundry room that day. The agent supplied numerous emails and texts to confirm their assertion that the landlords had demonstrated considerable flexibility in allowing the tenants access to the laundry facilities at times that were convenient for the tenants. The agent said that the tenants ended up getting 80% of what they were seeking in having a time period from 2:00 p.m. until 7:00 p.m. on Mondays when the tenants were requesting access from 3:00 p.m. until 8:00 p.m. on Mondays. The agent also noted that, contrary to evidence supplied by the tenants, there had only been two people residing in this rental unit for a long time, as the tenants' children were no longer in the tenants' custody. On this point, Tenant AL confirmed that they had been without custody of their children since July 2018.

The tenants sent the landlords a "warning letter" after the May 6, 2019 incident. In that letter, alleging that the laundry room door had been locked by the landlords on two occasions, the tenants advised the landlords that if they did not ensure that the door was open at the time when the tenants were supposed to have access to the laundry facilities that the tenants would be applying to the Residential Tenancy Branch (the RTB) for an order requiring the landlords to provide this service as agreed to in their Agreement. The agent testified that the tenants did not give the landlords a proper opportunity to address this situation, and immediately submitted their application to the RTB that same day.

In response to the tenants' pursuit of these issues with the landlords and the RTB, Landlord RK took action on May 15, 2019, to advise the tenants that their access to the landlords' laundry facilities would end as of June 15, 2019. Landlord RK used the proper RTB form, "Notice Terminating or Restricting a Service or Facility" (the Notice) for providing this notification. In this Notice, the landlord advised the tenants that their monthly rent would be reduced from $1,300.00 to $1,225.00 as of June 15, 2019, to reflect the loss in value of this portion of the tenants' Agreement with the landlords.

The landlords entered into written evidence a breakdown of the laundry prices at three laundromats, which the landlords maintained were within a distance of 0.9 k.m. and 1.2 k.m. of the rental unit and were open seven days per week. Based on the tenants' estimated need of doing two loads of laundry in both the washer and dryer once per week, the landlords estimated the new costs that the landlords were transferring to the tenants at between $40.00 and $48.00 per month. The agent maintained that the landlords' allowance of a reduction of $75.00 from the monthly rent reflected the additional inconvenience and time that would result from this termination of this aspect of their Agreement.

In their written evidence and in their sworn testimony, the tenants maintained that the provision of laundry facilities on site constituted an essential portion of their tenancy agreement with the landlords because the tenants do not have a vehicle to enable them to take laundry to a laundromat. They did not dispute the landlords' evidence with respect to the hours of opening of these facilities, the costs of using these machines or the distance to these facilities. They did maintain that the $75.00 reduction provided by the landlords was insufficient and did not adequately reflect the time and effort that would be required to take laundry to a laundromat in all types of weather.

Analysis

I should first note that while the tenants' application was initiated before the landlord issued the Notice, I consider the tenants' May 6, 2019 application that the landlords be required to provide the laundry facility to the tenants as sufficient to enable me to make a determination regarding whether this facility is one that could be legally withdrawn by the landlords. I also consider the tenants' application and the landlords' response broad enough to consider whether the tenants are entitled to any additional reduction in the value of their tenancy as a result of the landlords' Notice. Both parties were clearly expecting to present their positions with respect to any reduction in rent for which the tenants were applying, and I find that this reduction in rent extends to the situation as it currently exists, following the landlords' issuance of the Notice.

As the landlords correctly noted in their written evidence, sections 14(3) and 27(2) of the *Act* establish a landlord's ability to amend an existing tenancy agreement by withdrawing services or facilities that would not be part of a standard agreement. These sections read in part as follows:

> ***14*** *(1) A tenancy agreement may not be amended to change or remove a standard term...*

(3)The requirement for agreement under subsection (2) does not apply to any of the following:...

(b)a withdrawal of, or a restriction on, a service or facility in accordance with section 27 [terminating or restricting services or facilities]*;...*

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...

In considering whether the landlords' withdrawal of the laundry facilities constitute a material term of this tenancy, I have taken into consideration RTB Policy Guideline # 8, Unconscionable and Material Terms. That Guidelines notes that the determination as to the materiality of a term, by an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the tenants, to present evidence and argument supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

In this case, I find that other than the tenants' claim that their lack of a vehicle impedes their access to laundromats located about a kilometre from the rental unit, the tenants have provided little to establish that access to the washer and dryer was a material term of this tenancy. While it is undoubtedly more convenient to have laundry facilities within the same building, many tenancies do not include such facilities, requiring alternative arrangements to be made. The tenants did not identify any unusual reason such as a medical issue requiring their more frequent use of laundry facilities than the norm. In fact, the tenants have only had access to the landlords' laundry facilities for part of one day per week prior to June 15, 2019. The tenants did not identify any medical reason restricting their mobility that would render use of a choice of three laundromats within 0.9 to 1.2 k.m of the rental unit unfeasible. The availability of three nearby laundromats open seven days per week if anything is closer than many tenants experience. The tenants did not submit any evidence that would indicate that the parties considered the provision of shared laundry services once per week to be an essential component of this tenancy from the outset. Notwithstanding the vague wording used in this part of the Agreement, I find little to support a finding that the parties agreed from the beginning of this tenancy that the provision of laundry facilities by the landlords was so important to the tenants that the most trivial breach of that term by the landlords would have given the tenants a right to end their Agreement. For these reasons, I find that the landlords' withdrawal of the tenants' access to the laundry facilities in this rental unit was undertaken in accordance with section 27 of the *Act*, and did not constitute the landlords' withdrawal of a service that was a material term of their Agreement.

Based on a balance of probabilities, I also find that the $75.00 reduction in monthly rent that the landlords have provided as of June 15, 2019 represents a fair estimate in the tenants' loss in the value of their tenancy resulting from the landlords' withdrawal of the laundry facility from their Agreement. In this regard, the landlords' calculation of this amount is substantially more than the estimated direct costs that the tenants will incur by using any of the nearby laundromats to wash and dry their clothes. This reflects the additional costs that the tenants may incur in travelling to the laundromats and performing this task on a weekly basis.

While I find that the current monthly rent should remain at $1,225.00, this does not address the tenants' claim that they are entitled to some form of rent reduction for the period prior to June 15, 2019, when the landlords' Notice took effect.

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." Section 65 of the *Act* reads in part as follows:

> ***65*** *(1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:*
>
> *(c) that any money paid by a tenant to a landlord must be*
>
> *(i) repaid to the tenant,*
>
> *(ii) deducted from rent, or*
>
> *(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;...*
>
> *(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;...*

I find the wording of the portion of the original Agreement regarding the tenants' access to the shared laundry facility was vaguely worded and subject to a number of different interpretations. As Landlord RK confirmed that he drafted this wording, the landlords are responsible for any lack of clarity that resulted from this vague and unclear wording. Landlord RK maintained that the tenants understood from the beginning of this tenancy what was encompassed by "shared use" of the laundry facilities on a weekly basis. By contrast, the tenants disputed this and provided sworn testimony and written evidence that they were limited to five hours access to the laundry facilities at times when such access was convenient to the landlords. However, I note that the landlord and the agent provided sworn testimony and written evidence that calls into question the tenants' assertion that the landlords demonstrated little flexibility in arranging for laundry times.

The key issue before me with respect to the tenants` claim for a rent reduction is really whether the terms of the Agreement were sufficiently clear to establish what was entailed in shared access to laundry facilities on a weekly basis. In this regard and as this issue became a long-standing problem for both parties, I find that this wording was not clear and that the author of this portion of the Agreement bears the responsibility for the problems that have ensued from the attempts to implement this provision of the

Agreement. Based on what has transpired, I find that the tenants could not have known when they signed this Agreement that the landlord would require them to rush home in order to implement a time schedule that restricted their use of the laundry facilities to a five hour period each week. For this reason, I find that there has been a reduction in the value of this tenancy since the tenancy began.

While I find that there has been a reduction in the value of the tenancy as a result of the changes to the hours of the tenants` access to the laundry facilities, much of this results from the original lack of clarity regarding this feature of the tenancy and not the actual implementation of access to the laundry. For example, when Tenant AL started working, the tenants requested changes to the arrangements that appear to have been suitable prior to that time. When statutory holidays or other events required slight modifications to the regular schedule, it appears that the landlords have been as accommodating as would be expected, given the provision in the Agreement that the tenants had only shared access to the laundry once per week. Under these circumstances and as the tenants have only applied for a monetary award of $350.00, I find that the loss in the value of this tenancy has only been slight. For these reasons, I allow a somewhat nominal retroactive rent reduction of $10.00 per month for the duration of this tenancy, resulting in a monetary award of $210.00 for the 20 months from October 2017 until June 15, 2019, when the landlord withdrew the laundry facility from this tenancy agreement.

Although I have also considered the tenants` claim for the loss of three hours of wages resulting from the landlords` alleged locking of the laundry door in May 2019, I find that there is insufficient evidence to demonstrate that the tenants suffered any real loss in this regard. While Tenant AL said that the door was locked and that they could not enter the laundry room on May 6, the agent testified that they saw Tenant AL in that room that day and that they had access to the laundry room, which had not been locked. At any rate, there is no evidence that the tenants were prevented from doing their laundry on any of the three days identified by the tenants, and they provided insufficient evidence to demonstrate any real loss in wages as a result of actions attributed to the landlords, some of which appear to have occurred after the tenants` initiated their application for dispute resolution. I issue no monetary award to the tenants for lost wages arising out of this matter.

As the tenants have been partially successful in this application, I allow them to recover their $100.00 filing fee from the landlords.

I dismiss the remainder of the tenants` application without leave to reapply.

Conclusion

I issue a monetary award in the tenants` favour in the amount of $300.00, which enables the tenants to obtain a retroactive rent reduction and the recovery of their filing fee. As this tenancy is continuing, I order the tenants to reduce a future monthly rent payment on a one-time basis in the amount of $300.00.

I find that the Notice issued to the tenants by the landlords is valid and that the landlords notification to terminate the provision of access to laundry facilities within this rental property `did not breach a material term of this tenancy. The monthly rent for this tenancy as of June 15, 2019 is set at $1,250.00, as per the landlords` Notice.

The remainder of the tenants` application is dismissed 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: June 18, 2019

Residential Tenancy Branch