Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, RP, RR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order for the Landlord to comply with the Act, for an order to provide services or facilities required by the tenancy agreement, for an order for regular repairs, and for an order to reduce the rent for repairs, services of facilities agreed upon but not provided.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

Much of the hearing time was spent developing a settlement agreement, to which the Parties could both commit; however, in the end, a settlement was not reached, so I said I would make a decision on the issues, based on the evidence before me, overall.

The Tenant amended her Application to claim $2,900.00 for loss of quiet enjoyment, but she did not explain the basis of that amount. The Tenant said and I find that this amendment was served on the Landlord in person prior to the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to an order for the Landlord to comply with the Act, regulation and/or tenancy agreement?
- Is the Tenant entitled to an order for the Landlord to provide services or facilities required by the tenancy agreement or the law?
- Is the Tenant entitled to an order for regular repairs?
- Is the Tenant entitled to a rent reduction for services agreed to, but not provided?

Background and Evidence

The Parties agreed that the periodic tenancy began in October 2018, and that the rental unit is located on a 10 acre, hilltop property, approximately 10 kilometres out of the nearest town. The Parties disagreed on the amount they had initially agreed on for rent, with the Landlord saying that it was a monthly rent of $450.00 and the Tenant saying it was $400.00. They agreed that rent was due on the first day of each month. The Parties agreed that the Tenant paid no security deposit and no pet damage deposit. During the hearing, the Landlord said that she agreed that the Tenant's rent should be $400.00 per month.

Landlord to comply with Act, Regulation, and/or Tenancy Agreement

In her documentary evidence, the Tenant said that the Landlord attends the rental unit frequently, without notice and in a manner that disturbs the Tenant:

> On a daily basis the landlord appears at my rented premises without any prior notice – all too frequently yelling, screaming, ranting and raving, at me. This has been witnessed by the other tenant who will verify this by signing at the bottom of this page that this is indeed the case. This sometimes occurs multiple times a day. I have a right to peacefully enjoy the premises and need 24 hours' notice to have the landlord at my premises and only for emergencies. The RCMP have been called twice in the past 2 weeks and implored to apprise her of our right to peaceful enjoyment.

> I would like to request the equivalent of a restraining order that I may be left in peace, her not in my near vicinity whatsoever, and to change the locks, and to limit her access totally to me unless there is actually an emergency.
>
> [reproduced as written]

The bottom of the Tenant's document was signed by someone describing himself as a neighbour and dated July 10, 2019. The Landlord acknowledged the attendance of the RCMP at the residential property. She said the other tenant, A.H., causes problems for the residential property, which led to the attendance of the police.

Landlord to Provide Services or Facilities and Regular Repairs

In the hearing and in her documentary evidence, the Tenant stated that the Landlord has stopped providing water to the rental unit, because of the failure of the well to supply sufficient water for the tenants on the residential property. Further, the Tenant said the Landlord has not found another means of providing the Tenant with water for the rental unit.

In her documentary evidence, the Tenant stated:

> Since May 26, 2019 there has been no water provided by the landlady as the well providing water faltered at that time. The landlord then refused to bring in water, or activate a secondary well that exists on the property.
>
> Shortly thereafter (10 days later) the landlord declared the property rentals here did not include water service with the rent paid which was expected in full as the rentals on the property now were for shelter only.
>
> For 3 weeks we had absolutely no water whatsoever. The other tenant, driven by necessity, was forced to bring in water so both rental premises are liveable.
>
> During the last week in June the landlord erected a No Trespassing sign by the water intake access point to prevent any water being added to the system. On Sunday July 7th, the well completely dried up again, the other tenant, [A.H.] was prepared to top up the well and the landlord categorically stated that that would be regarded as trespassing and refused access. The local RCMP were called, informed of her actions, but stated they were unable to enforce anything as this was a tenancy issue.

> Commencing June 26, and for 3 days previous, up to today July 10th, there has been no water, or only a sporadic supply by the other tenant, on the premises to wash dishes, personal hygiene and bathing, flushing the toilet, or washing clothes.
>
> There are health issues at stake, I am distraught, and have lost 5 pounds in the past 3 weeks, being so upset I am unable to eat regularly. In short, I demand the water be restored immediately and available without fail on a permanent basis. She must secure a portable tank, fill it at the local CRD water supply outlet, and bring it onto the property to fill the well while other repairs and activation of the other well is facilitated if she so chooses. It is not my concern how the water is returned, but I will not accept ANY delay whatsoever. .
>
> [reproduced as written]

During the hearing, the Landlord said: "This well has been there for 30 years, and it has stopped producing totally. My well has completely failed. My cistern is leaking and I have been working on my whole plumbing problem. It will take $10,000.00 to fix the plumbing." The Landlord said that she "cannot have tenants there unless they pack in their own water. I can pack a little bit for her [the Tenant]."

The Landlord did not indicate how she knew how much the repair would cost; she did not submit any cost estimates to repair the water supply at the residential property.

The Landlord submitted a letter dated June 15, 2019, from a local water delivery company, which states that they went to the residential property three years prior to determine if they could deliver water there. However, in the letter they said: "It would not be possible for our water trucks to deliver due to the driveway being in such poor condition and totally unsafe. From speaking with [the Landlord], the owner of the property, she has advised that it is in worse condition today than it was 3 years ago as nothing has been done to the driveway. This being the case, we still cannot deliver water to [the residential property]."

In the hearing, the Landlord said that her driveway is very steep and it is unsafe for people to deliver more than a few carboys of water there at a time.

Rent Reduction

The Tenant applied for a rent reduction for repairs, services or facilities agreed upon but

not provided in the amount of $854.24, which is detailed below.

In her documentary evidence, the Tenant said that her rent “for a very small room” is $400.00, which she said amounts to $13.33 per day. The Tenant said she has been without water for 45 days, at a rate of $13.33 per day equals $600.00. The Tenant noted that this is the amount up to July 10, 2019, but that the water supply problem continues.

The Tenant also requested compensation to recover the cost of staying in a local hotel with a daily rate of $224.99, excluding taxes and fees, which she said are $29.25, for a total of $254.24 per night. The Tenant said that she is currently a Social Services recipient; therefore, she does not have the means to cover the cost of alternate accommodation. The Tenant included a copy of a website, photograph and daily rate for a nearby resort, but it is not clear if the Tenant stayed there or wants to stay there as respite from her current living situation. The Tenant did not indicate if there were any other hotels or motels in the area.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Landlord to Comply with Act, Regulation, and Tenancy Agreement

Residential Policy Guidelines #6 and #7 (“PG #6” and “PG #7”) address a tenant’s right to quiet enjoyment and peaceful occupation of the rental unit, as set out in sections 28 and 29 of the Act.

PG #6, “Entitlement to Quiet Enjoyment” establishes:

> **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**
>
> A landlord is obligated to ensure that the tenant’s entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.
>
> Temporary discomfort or inconvenience does not constitute a basis for a breach

of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

. . .

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which premises, and the length of time over which the situation has existed. A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

PG #7 states:

A landlord must not enter a rental unit in respect of which the tenant has a right to possession unless one of the following applies:

- an emergency exists and the entry is necessary to protect life or property,
- the tenant gives permission at the time of entry, or
- the tenant gives permission not more than 30 days before the time of entry,
- the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry.
- the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms,
- the tenant has abandoned the rental unit, or
- the landlord has an arbitrator's order authorizing the entry.

Regarding written notices, the notice must state a reasonable purpose for the

entry and must give the date and time intended for the entry. The time stated must be between 8:00 a.m. and 9:00 p.m.

The notice must be served in accordance with the Residential Tenancy Act. If the landlord leaves the notice in the mailbox or mail slot, or attaches it to the door or other conspicuous place on the rental unit, the notice is not deemed to be received until 3 days after posting or placing it in the mailbox or slot. If the notice is sent by mail, the notice is not deemed received until 5 days after mailing. If the notice is sent by fax, the notice is not deemed received until 3 days after faxing it. This additional time must be taken into consideration by the landlord when advising of the date and time of entry.

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Note that under the Act a landlord may inspect a rental unit monthly.

Based on the evidence before me, overall, I find on a balance of probabilities that there were frequent and ongoing unreasonable disturbances to the Tenant's right to quiet enjoyment. I find that the Landlord violated the Act by not giving the Tenant notice of the Landlord's planned attendance at the rental unit and visiting unreasonably frequently. Further, based on the evidence before me, overall, I find that the Landlord's attendances at the rental unit have not been for acceptable reasons, as set out in PG #7.

The Tenant applied for $2,900.00 compensation for her loss of quiet enjoyment; however, she did not explain or detail the basis for claiming this amount.

According to Policy Guideline #16 ("PG #16"): "A party seeking compensation should

present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence." PG #16 also states that the party making the application did what was reasonable to minimize the damage or loss. I find that the Tenant's claim for $2,900.00 is an arbitrary and rather high amount for her loss of quiet enjoyment from the Landlord's violation of the Act in this regard. PG #16 sets out that where the value of the damage or loss is not straightforward, an arbitrator may award nominal damages for intangible damage or loss, where it has been proven that an infraction of a legal right has occurred. As a result, I award the Tenant a nominal amount of **$50.00** for loss of quiet enjoyment.

This situation is unique from many residential tenancies, in that the Landlord lives at the same address as the Tenant; therefore, it is difficult to restrict the Landlord's access to the residential property. However, I order the Landlord to comply with the Act and regulation in attending the rental unit, as follows:

Pursuant to section 29 of the Act, the Landlord must not enter the Tenant's rental unit for any purpose, unless one of the following applies:

1. The Landlord gives the Tenant **written notice** at least 24 hours and not more than 30 days before the entry, that includes the following information:
    (i) the purpose for entering, which must be reasonable;
    (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
2. The tenant has abandoned the rental unit; or
3. An emergency exists and the entry is necessary to protect life or property.

In addition, the Landlord may inspect the rental unit monthly, as long as she complies with point 1 above.

Landlord to Provide Services or Facilities and Regular Repairs

Section 27 of the Act addresses a landlord's requirements around 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.
>
> [emphasis added]

A landlord cannot unilaterally terminate an essential service, such as the supply of water to a rental unit, which I find is an essential service. Rather, section 32 of the Act establishes that a landlord must provide and maintain the residential property in a state of decoration and repair that complies with health, safety and housing standards required by law.

The Landlord said that it would cost her $10,000.00 to repair the plumbing at the residential property, but she did not provide any basis for this figure or explain her authority for refusing to provide this service.

I issue the following orders and authorizations with a view to avoiding these issues in the future:

I **order** the Landlord to establish a reliable, long term means of providing water to the residential property **by September 3, 2019**.

I **order** that the rent payable by the Tenant to the Landlord is reduced by 50%, retroactive to May 26, 2019, when the water supply ended (see next section for the Tenant’s recovery of the retroactive amount).

Based on the evidence before me, overall, I find that at the start of the tenancy, the Parties agreed that the Tenant would pay the Landlord $400.00 per month for the rental unit, which amounts to $4,800.00 per year, divided by 365 days or $13.15 per day. Accordingly, I order that the daily rent is half this amount: $6.58 per day or $200.00

per month until the water supply is repaired.

I **order** that the rent will remain at this amount until the Landlord repairs the water supply and applies for dispute resolution at the RTB. The Landlord will have to demonstrate to the satisfaction of an RTB arbitrator that the water supply has been sufficiently repaired to be a reliable, long term source, in order for the Tenant's rent to be returned to $400.00 per month.

The Tenant applied for compensation in the amount of $254.24 for a night's accommodation in a local resort hotel, to compensate for the lack of water supply to the rental unit. As noted above, PG #16 requires the party seeking compensation to present compelling evidence of the value of the damage or loss in question and to do what was reasonable to minimize the damage or loss. I find that the Tenant has not established a basis for this claim, that it is sufficiently related to the loss of quiet enjoyment, and that she has minimized the damage or loss for which she seeks compensation. As such, I dismiss this claim without leave to reapply.

Rent Reduction

Section 65 of the Act allows an arbitrator to make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement for repairs, services or facilities agreed upon but not provided.

Based on the evidence before me, overall, I find that the water supply to the residential property ended on May 26, 2019. Therefore, I find that the Tenant was without this essential service for 6 days in May, 30 days in June, 31 days in July, and 31 days in August for a total of 98 days. I find the Landlord owes the Tenant 50% of the rent for this time period or $6.58 per day for a total of $644.84. I award the Tenant a monetary order of $644.84.

This is in addition to the Tenant's nominal award of $50.00 for the loss of quiet enjoyment, for a total monetary order of **$694.84**.

Conclusion

The Landlord violated the Act, regulation and/or tenancy agreement by attending the rental unit frequently in an unreasonable fashion, and without giving the Tenant any notice of these attendances. The Tenant is awarded a nominal amount of $50.00 for

loss of quiet enjoyment., and the Landlord is ordered to comply with the Act in the future in this regard.

The Landlord also stopped providing a water supply to the rental unit, which is an essential service under the Act. As a result, the Landlord is ordered to repair the water supply by September 3, 2019. Further, the Tenant is awarded a 50% rent reduction starting from May 26, 2019, the date the water supply ceased to be provided, in the amount of $644.84. This represents a retroactive award as compensation for a loss of the essential service of water supply from May 26, 2019 to August 31, 2019. In order to satisfy this award, the Tenant is authorized to withhold future monthly rent owing, up to the amount of the award.

The rent reduction is ordered to remain in place until the Landlord applies for dispute resolution at the RTB to prove that the water supply has been restored; at that time, the Tenant's monthly rent will return to $400.00 per month, if an RTB arbitrator is satisfied with the Landlord's evidence of the reliable, long term reinstatement of the water supply to the residential property.

In addition, the Landlord is cautioned to comply with section 26 of the Act, which requires landlords to provide tenants with receipts for rent paid in cash.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: August 15, 2019

Residential Tenancy Branch