



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT OLC

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*,
- an order for the landlord to comply with the *Act*, regulations or tenancy agreement, pursuant to section 62 of the *Act*, and
- recovery of the filing fee paid for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord attended with counsel.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenants' Notice of Dispute Resolution Proceeding Package and evidence, and the tenants confirmed receipt of the landlord's evidence. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with the *Act*.

Preliminary Issue – Amendment to Tenants' Application for Dispute Resolution

During the hearing, the tenants amended their monetary claim to withdraw the \$10,000.00 claim pertaining to "loss of our peace of mind and social security caused by the actions of [the landlord] to create fear of eviction". As such, I dismiss this part of the tenants' Application with leave to reapply.

Therefore, I have only considered the tenants' remaining part of their claim of \$1,000.00 for "incurred financial expenses to fulfill the Dispute Claim requirements, from copy services to legal advice to 50 pages of registered mail."

Issue(s) to be Decided

Are the tenants entitled to a monetary award for compensation for loss? Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement? Are the tenants entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The tenants claimed that the tenancy agreement includes the exclusive use of the laundry room area and laundry. To access the rental unit, the tenants enter the house through an exterior door, walk through the laundry room, and then enter their rental unit through an interior door which has only a push lock and no key locking mechanism. The rental property's hot water tank, washer and dryer are located in the laundry room. The tenants have used the laundry room for storage of their personal belongings since the beginning of the tenancy.

Although the tenants originally signed a fixed-term tenancy agreement beginning July 1, 2015, the tenants signed a new fixed-term tenancy agreement beginning April 1, 2019.

The tenants claimed that they thought the only change in the new tenancy agreement pertained to the amount of monthly rent, increasing from \$1,100.00 to \$1,200.00, however in Part 3 of the new tenancy agreement, the box for laundry, among several other boxes, was no longer checked off to be included in the rent. The tenants testified that although they signed the new tenancy agreement, they did not notice that laundry was not included in the new tenancy agreement, and stated they would not have agreed to this change in the terms. The tenants submitted into evidence emails between them and landlord B.C. in which the only change to the tenancy agreement terms discussed was the increase in rent.

The tenants Application requests an Order for the landlord to comply with *Act*, regulations, or tenancy agreement, as the landlord sent written notice to the tenants by email on September 18, 2019 that the laundry room will be made accessible to other occupants of the rental property.

The landlord explained that the washer and dryer are the only laundry located in the rental property. The landlord confirmed that she tried to work out a laundry use schedule with the tenants in order to provide access to the laundry for the other rental unit on the property. The landlord claimed that the use of the laundry room was never included in the original terms of the tenancy agreement. The landlord referenced the fact that the hot water tank is located in the laundry room area. The landlord also claimed that the washer and dryer are no longer included in the terms of the current tenancy agreement.

The tenants also claimed monetary compensation of \$1,000.00 for time and materials to prepare for the hearing.

Analysis

Section 62 of the *Act* provides that an Arbitrator may:

- make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*; and
- make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

Based on the testimony and evidence of the parties, on a balance of probabilities, I make the following findings regarding the two aspects of the tenants' Application for Dispute Resolution.

- 1) Request for Order for landlord to comply with *Act*, regulations or tenancy agreement

I find that in February 2019 the tenants signed a new fixed-term tenancy agreement with the landlord set to begin April 1, 2019, and that this agreement did not include a "check mark" in the check box for laundry, unlike the previous tenancy agreement which included a check mark for laundry. The tenants acknowledged that it was an oversight

on their part, as they thought the only part of the tenancy agreement to be changed was the agreed upon increase in the rent amount. I find that the emails from landlord B.C. to the tenants failed to mention any change to the terms of the tenancy agreement pertaining to laundry, and only references a change in the amount of rent. The landlord failed to call on landlord B.C. to present testimony in the hearing regarding his intentions at the time the new tenancy agreement was signed or any discussions that he had with the tenants about the use of the laundry room. As such, I have only the first-hand testimony of the tenants regarding their negotiation with landlord B.C. over the terms of the new tenancy agreement and their documentary evidence of the emails between them and landlord B.C. During the hearing, landlord S.C. did not provide any testimony that she had any discussions with the tenants about changing the laundry term of the tenancy agreement leading up to the signing of the new tenancy agreement. Therefore, I find this lends support to the tenants' argument that there was no intention on the part of either party to change the tenancy agreement terms pertaining to the use of the laundry at the time the new tenancy agreement was signed in February 2019, and that failing to check the "laundry" box on the tenancy agreement was an oversight by both parties.

I find that the landlord continued to provide the tenants with laundry and did not take any action to effect this change in the tenancy agreement until over five months into the new fixed-term, on September 18, 2019, when the landlord sent the tenants an email requesting to arrange a laundry access schedule to allow other occupants of the rental property use of the laundry equipment. At no time did the landlord tell the tenants that they were no longer entitled to free laundry or use of the laundry equipment based on the change in the tenancy agreement. The landlord's written request was to limit the tenants' use of the laundry room to specified days and times, and to request that the tenants provide the other occupants with access to the laundry room, which had been exclusively used by the tenants as storage and a secondary suite exit point throughout the tenancy. I find that the landlord's failure to take any action to effect a change to the terms of the tenancy agreement pertaining to use of the laundry room or laundry equipment further supports the tenants' argument that there was no intention on the part of either party to change the tenancy agreement terms pertaining to the use of the laundry at the time the new tenancy agreement was signed in February 2019.

I find that the door between the laundry area and the rest of the tenants' living area is a door with only a push lock, and no key locking mechanism which would be required on an exterior door. As such, I find the door to be an "interior" type of door. I find that this lends support to the tenants' argument that the laundry area was intended to form a part

of the rental unit since the beginning of the tenancy agreement. I find that the location of the hot water tank in the laundry area is not a material consideration given that a hot water tank requires very occasional maintenance, is often located within the living area of a rental unit, and given the landlord would still be able to attend to servicing the hot water tank, like they would with any appliance, with appropriate notice for access being provided to the tenants.

For the above reasons, I find that there is sufficient evidence that there was no intention by either party to remove the tenants' inclusion of laundry in their rent as part of the new tenancy agreement that took effect April 1, 2019, rather that the parties lack of knowledge regarding the appropriate process for implementing a rent increase led to the parties signing a new tenancy agreement to document the new agreed upon monthly rent. As such, I find that laundry remains included as a service provided by the landlord in the tenancy agreement.

Further, I find that there is sufficient evidence that the laundry area was intended to be included as part of the rental unit under the tenancy agreement. In addition, I find the landlords allowance of the tenants' use of the laundry area for storage of their belongings since the beginning of the tenancy in 2015 constituted acceptance of the tenants' exclusive use of this area as part of their rental unit.

As such, I find that the tenants have provided sufficient evidence to prove their claim, on a balance of probabilities, their entitlement to laundry as a service included in their rent under the tenancy agreement and exclusive use of the laundry area as part of the rental unit under the tenancy agreement.

Therefore, as I have made findings to clarify the terms of the tenancy agreement, I order the landlord to comply with these terms of the tenancy agreement.

- 2) Monetary compensation claim of \$1,000.00 for time and materials related to hearing preparation

While provisions regarding claims for disbursement costs such as registered mailing costs, service of documents costs, printing and travel expenses are provided for in Supreme Court Proceedings, they are specifically not included in the *Residential Tenancy Act*. Under the Act, the only allowable recoverable expense pertaining to the dispute preparation costs is the filing fee, which the tenants have applied for in this matter. Therefore, the tenants' claim for the time and material costs related to the

preparation of the Application for Dispute Resolution is not allowable under the *Act* and is dismissed. Given that the tenants were successful in obtaining an Order for the landlord to comply with the tenancy agreement, I find that the tenants are entitled to recover the \$100.00 filing fee for their Application.

The tenants may withhold \$100.00 from their monthly rent payment on one (1) occasion in full satisfaction of the recovery of the filing fee from the landlords.

Conclusion

The landlord is ordered to comply with the terms of the tenancy agreement clarified in this Decision.

The tenants \$1,000.00 monetary claim is dismissed.

The tenants may withhold \$100.00 from their monthly rent payment on one (1) occasion in full satisfaction of the recovery of the filing fee from the landlords.

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: November 20, 2019

Residential Tenancy Branch