



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, PSF, RR, FF

Introduction

This hearing was scheduled in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order restricting the Landlord’s access to the unit - Section 70;
2. An Order for the Landlord to comply - Section 62;
3. An Order for the provision of services and facilities - Section 65;
4. An Order for a rent reduction - Section 65; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witnesses provided evidence under oath.

Preliminary Matters

The Landlord confirms that although not named as landlord on the tenancy agreement he acts as the Landlord’s agent in this matter. Near the end of the tenancy the Landlord asked to call a Witness and the Tenant did not object. The Landlord’s Witness appeared then and identified herself as one of the Landlord’s on the tenancy agreement. The Landlord confirms that the email address provided for the Landlord in the application is correct.

Issue(s) to be Decided

Is the Tenant entitled to an order restricting the Landlord's access?

Is the Tenant entitled to an order for the Landlord to comply?

Is the Tenant entitled to services and facilities?

Is the Tenant entitled to a rent reduction?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on November 26, 2018. Rent of \$1,600.00 is payable on the 26th day of each month. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit. Upon payment of the security deposit the Landlord provided the Tenant with a note agreeing to provide a washer and dryer. No move-in inspection was done.

The Tenant states that the Landlord did not provide the Tenant with a key to the mailbox. The Tenant seeks an order for the Landlord to provide the mailbox key. The Tenant states that it has had to rent another mailbox and claims a rent reduction equivalent to the cost of that rental in the amount of \$345.00. The Tenant provides a receipt for this amount. The Landlord states that the tenancy agreement provides that the Parties will share the mailbox and that the Landlord will deliver the Tenant's mail received in that mailbox to the Tenant. The Landlord states that the Tenant only paid \$61.00 for the postal box as indicated in the receipt provided by the Tenant for this dispute.

The Tenant states while the Tenant was in the unit and 2 days after the tenancy started the Landlord used its own keys and entered the unit without any notice or permission from the Tenant. The Tenant states that the Landlord was told to leave and did not leave quickly. The Tenant states that the Landlord again entered the unit on July 22, 2019 while the Tenant was not in the unit. The Tenant states that she knows the Landlord entered as the breaker box by the entry was open when the Tenant came

home that day. The Tenant asks that the Landlord comply with the Act and provide written notice of any future entries. The Landlord states that it did not enter the unit on July 22, 2019 but agrees to provide the Tenant with written notice of any future entries by the Landlord.

The Tenant states that the Landlord did not provide a visitor's parking pass to the Tenant at the onset of the tenancy. The Tenant states that the Strata provides two parking passes to owners of the unit however the Tenant only asks for one pass. The Tenant states that the lack of a parking pass has led to guests having to park outside the property and that on many occasions no such parking has been available. The Landlord states that the Tenant was given a pass.

The Tenant states that while it was given both a fob and a key for entry to the unit at move-in, around November 2019, the entry locks were changed by the Strata. The Tenant states that the Landlord was given a new key for the entry but has not provided the Tenant with a new key. The Tenant states that while the fob will generally allow entry, if the electricity is off the Tenant cannot use the fob. The Tenant states that on one occasion the Tenant could not enter the building with its fob and was just lucky that a building employee was present to open the door for the Tenant. The Landlord states that the entry was re-keyed on July 30, 2019 and that the Tenant was given a new key. The Landlord states that the Tenant lost her key. The Tenant denies losing the key and states that it was never given to her.

The Tenant states that the Landlord has only provided a washer, but no dryer has been provided. The Tenant states that the Landlord informed the Tenant that a dryer could not be provided as the building structure did not allow for a dryer as there was some problem with flooding of the building at some point. The Tenant asks for an order that the Landlord provide a dryer. The Tenant also states that as the Tenant has been paying rent for a unit that would include a dryer the Tenant seeks a rent reduction of \$150.00 per month for the time that the Tenant is without a dryer.

The Tenant's Witness states that it inspected the unit in January 2019 and that no dryer was in the unit. The Witness states that the machine that was in the unit does not have a drying function. The Witness states that it has been a contractor, construction manager and carpenter since 1997. The Witness states that the voltage and vent capacity of the unit was checked without making any intrusions in the unit and that the unit does have the capacity for a stand-alone dryer. The Tenant provides a copy of a report of the inspection done by the Witness. The Tenant claims an order for the provision of a dryer and a rent reduction of \$150.00 per month for past loss of the dryer and continuing for the duration of the tenancy or until the Landlord provides a dryer.

The Landlord questions the knowledge and skills of the Tenant's Witness and states that the company named by the Witness on its invoice was called and that the company stated that the Witness had not been seen for several years. The Landlord states that the Witness is not qualified to assess the capacity of the unit to have a dryer. The Witness states that it owns the company that the Landlord spoke to. The Witness states that the Landlord can get its own professional to inspect and that this will only result in the same outcome. The Tenant states that the Landlord was asked by text to come and inspect the machine for the dryer capacity and that the Landlord replied that the Tenant should go and find someone herself.

The Landlord states that the Tenant was provided with a machine that does both washing and drying and that the Landlord installed and hooked up the machine. Landlord OG, also a Witness for the Landlord, states that it was present when the combined machine was purchased for the unit and points to the invoice provides as evidence that the machine combined both the washing and drying functions in the same machine. The Landlord states that when the unit was purchased on 2016, they were told that there was a problem with the building and that a dryer could not be installed as it was a fire hazard. The Landlord states that something was flooded. The Landlord states that it never had a dryer for the few months that they lived in the unit and that the

unit was subsequently left empty until the current tenancy. The Landlord states that it does not know if other units in the building have separate dryers. The Witness states that the building is new and that it would be impossible for the building not to have the capacity for a dryer hook-up. The Landlord refuses to provide a separate dryer to the Tenant. The Landlord argues that the Tenants claim for a rent reduction for the lack of a dryer is not supported by any receipts showing the Tenant's costs to do laundry. The Landlord questions how the Tenant came to the monthly amount claimed.

The Tenant withdraws its claim for a rent reduction of \$1,300.00 as it is not sure what this amount was for.

The Tenant claims \$135.00 as the costs for the time of its Witness and \$265.00 for the cost of the inspection for the dryer.

Analysis

Section 28(a) of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, reasonable privacy. Section 5 of the Act provides that landlords and tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect. Residential Tenancy Branch (the "RTB") Policy guideline #1 provides that a landlord must give a tenant at least one set of keys for the mailbox. Although the tenancy agreement provides that the Tenant will share the mailbox with the Landlord as the Landlord has access to the Tenant's mail arising from this provision, I find that this provision results in a breach of the Tenant's privacy. As this provision allows the Landlord to avoid its obligation to protect the Tenant's privacy, I find that this provision under the tenancy agreement is of no effect. I order the Landlord to immediately provide the Tenant with a key to the mailbox and I order the Landlord to immediately cease all access to that mailbox while the tenancy continues.

Although the Tenant has not made a claim for compensation and only claims a rent reduction, I consider that the mailbox rental receipt can only be used as an example for an amount of a rent reduction. As the Tenant's receipt shows a cost of \$61.00 for a period of three months, and as the Tenant has been without mailbox access for the duration of the tenancy, I find that a rent reduction for this period would include \$20.00 per month as the actual cost of another mail box. I also consider that the Tenant has suffered an inconvenience in having to obtain its mail outside of the building and that this inconvenience entitles the Tenant to an additional \$10.00 per month for a total of \$30.00 per month for the 14 months from December 2018 to January 2020 inclusive for a total of **\$420.00 in a retroactive rent reduction**. The Tenant may deduct this amount from future rent payable in full satisfaction of this amount. Should the Landlord fail to provide the Tenant with a key and sole access to the mailbox in the building I find that the Tenant is entitled to a continuing monthly rent reduction of **\$30.00** to the end of the tenancy.

The Tenant is not seeking any restriction on the Landlord's right of entry and only asks that the Landlord comply with the notice requirements under the Act. As the Landlord has agreed to comply, I find that the Tenant's claim has been met by this agreement. Should the Landlord fail to act in compliance with the Act for entry, the Tenant has leave to reapply for compensation.

Section 30(1)(b) of the Act provides that a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by that tenant. As the Landlord has indicated that the Tenant was given a parking pass, I consider that the Landlord agreed to provide such a pass to the Tenant. I consider the Tenant's evidence of not having received a pass however to hold a ring of truth. Based on the Tenant's undisputed evidence of an otherwise lack of parking for its guests I find that the Tenant has substantiated that the Landlord is unreasonably restricting access for the Tenant's guests. For these reasons I order the Landlord to immediately provide

the Tenant with a parking pass. Should the Landlord fail to comply with this order I give the Tenant leave to reapply for compensation.

Section 31(1) of the Act provides that a landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property. I consider that the Tenant's evidence of not having an entry key and being unable to enter the unit as a result when the electricity is not working to hold a ring of truth. For this reason, I do not accept the Landlord's evidence of having provided such a key when the entry lock was rekeyed. As the Landlord is required to provide the Tenant with access to the building, as the Tenant currently only has access by the fob, as it is undisputed that such access is not provided when the electricity is out, I find that the Tenant has established an entitlement to a building entry key. I order the Landlord to immediately provide this key to the Tenant. Should the Landlord fail to act as ordered the Tenant has leave to reapply for compensation.

Section 65(1)(f) of the Act provides that if the director finds that a landlord has not complied with the Act, the regulations or a tenancy agreement, the director may 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. There is no dispute that the Landlord agreed in writing to provide the Tenant with a washer and dryer when the security deposit was paid. This agreement contradicts the Landlord's evidence that it was informed when it purchased the unit that a dryer could not be installed. Given the Witness evidence of its knowledge and experience and considering that the Landlord has not provided any compelling evidence to dispute that knowledge and experience, I find that the Witness evidence is credible. Given the detailed inspection report and the Tenant's evidence I find that the unit does have the capacity for the installation of a dryer. The Landlord's invoice provided as evidence that the Tenant was given a machine with a dryer function does not reference any dryer capacity. The invoice only refers to an apartment washer. Given the Witness evidence that no dryer function is included with the machine provided

to the Tenant, I find on a balance of probabilities that the Landlord has not provided the Tenant with a dryer as agreed. For these reasons I find that the Tenant is entitled to a dryer and I order the Landlord to provide the Tenant with a dryer as soon as possible and no later than January 31, 2020.

I also find that the Tenant suffered a loss in rental value by not having the promised dryer and is entitled to a rent reduction for the period December 2018 to January 2020 inclusive. As the Tenant provided no rationale for the amount requested for a monthly rent reduction, I find that the Tenant has not sufficiently established the amount claimed. However, as I consider that the Tenant is greatly inconvenienced in not having a dryer in the unit, I find that the Tenant is entitled to a reasonable and nominal **retroactive deduction of \$100.00 per month** for the past 14 months in the total amount of **\$1,400.00**. The Tenant may deduct this amount from future rent payable in full satisfaction of this amount. Should the Landlord provide the Tenant with a dryer in advance of the beginning of any month, the deduction for the next month and continuing may not be made. However, if the Landlord does not provide a dryer, I find that the Tenant is entitled to a continuing monthly rent reduction of **\$100.00** to the end of the tenancy.

As nothing in the Act provides for a party's cost to participate in the proceedings and as the Witness and inspection costs claimed were incurred to provide evidence for the proceedings to support the Tenant's claims, I dismiss the claim for the inspection and Witness participation costs.

As the Tenant has been primarily successful with its claims, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,920.00**. The Tenant may deduct this amount from future rent payable in full satisfaction of this amount.

Conclusion

I order the Landlord to immediately provide the Tenant with a key to the mailbox to immediately cease all access to that mailbox while the tenancy continues.

I order the Landlord to immediately provide the Tenant with a visitor parking pass and an entry key.

I order the Landlord to provide the Tenant with a dryer as soon as possible and no later than January 31, 2020.

I grant the Tenant an order under Section 67 of the Act for **\$1,920.00**. The Tenant may deduct this amount from future rent payable in full satisfaction of the claim. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 24, 2020

Residential Tenancy Branch