



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT OLC PSF RP**

Introduction

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

- Authorization to recover the filing fees from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62;
- An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62; and
- An order for regular repairs to be done to the rental unit pursuant to section 32.

Both of the tenants attended the hearing and were represented by co-tenant, AG ("tenant"). The landlord also attended the hearing with her spouse, WS. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the tenant's application.

The tenant advised me at the beginning of the hearing that the monetary compensation she seeks has gone up since the filing of the application. She did not file an amendment to her application. I advised the tenant of her requirement to amend her application if she wanted additional compensation, however the tenant was allowed to seek an additional 2 months of rent returned since the filing of her application in accordance with section 64(3)(c) of the *Act*.

Partial Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. I advised the parties that there is no obligation to resolve the dispute through settlement and that if either party did not wish to resolve this matter through settlement, I was prepared to make a decision based on the evidence before me. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of parts of their dispute.

Both parties agreed to the following final and binding settlement of a portion of the issues currently under dispute at this time:

1. The landlord agrees to replace the outdoor stairs and railings when the landlord replaces the fibreglass surface of the deck area this spring or summer of 2020. The tenant agrees to allow the landlord to do this repair on 24 hours notice of the landlord's intention to do so.
2. The parties agree that the tenant will have her laundry completed between the hours of 8:00 a.m. and 9:30 p.m. on any given day, Monday through Sunday. The parties agree that this is a material term of the tenancy agreement.
3. The tenant agrees to move the gardening equipment out of the front patio area forthwith.
4. The landlord will provide the tenant, BH with this front patio area for her exclusive use.
5. The landlord will ensure BH takes down the yurt/tent that was installed on the common property of the residential property by February 2, 2020.
6. The landlord agrees to remove the full-length mirror stored in the laundry room on 24 hours notice to the tenant, within the next week. The tenant agrees to allow the landlord access through the rental unit to facilitate the removal of the mirror.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle certain aspects of this dispute.

Issue(s) to be Decided

Should the landlord be required to compensate the tenant for failure to provide quiet enjoyment?

Should the landlord be required to provide services or facilities required by the tenancy agreement?

Should the landlord be required to do regular repairs to the unit or the residential property?

Should the landlord compensate the tenant for a service that was discontinued (internet)?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that the rental unit consists of the top floor of a house that contains three individual rental units. The other two units are side by side below the tenants'. A copy of the tenancy agreement was provided as evidence. The fixed one-year tenancy began on October 1, 2012, becoming month to month at the end of the fixed term. Rent was set at \$1,400.00 per month, payable on the first day of each month. Laundry and internet are included in the rent, cablevision is not. At the commencement of the tenancy, the landlord collected a security deposit in the amount of \$700.00 which she continues to hold.

The tenant gave the following testimony. She has been having problems with the two sets of tenants that live below her. From the tenant's standpoint, there have been no complaints about her or her family; the first time the police were called was after they had reported the downstairs tenants to the police. The tenant testified that since the second tenant moved in, there have been problems for her which she wants the landlord to rectify. The two sets of tenants have become friendly and are now 'ganging up' on the tenant and her family. The downstairs tenant BH installed a yurt/tent in the driveway which is directly below the master bedroom to this tenant's unit. BH and her guests 'party all night', describe how they want to 'get rid of' this tenant. The other tenants make her and her family so uncomfortable that her children are afraid to play outside.

The tenant has always been able to use the laundry facility whenever she needed to, however she has limited her use of the facility to end before 11:00 p.m. at the latest.

The rental unit requires repairs. The walls have not been painted for 7 years; there is a leak in the master bathtub causing the molding to deteriorate; there is garbage and debris left on the property that can potentially cause rodents and raccoons; the house and shed are moldy, and there is a broken down vehicle in the driveway. There is a problem with ants in the rental unit as well.

The tenant testified she does not have access to the electrical panel which causes her concern because the lower unit tenant threatened to shut off power to her unit. Once, she had been without power for 3 days.

Internet was included in the tenancy agreement and slowed down dramatically after the landlord moved out. On her own, the tenant obtained internet access from a different provider and the landlord discontinued the internet service for the tenants.

Lastly, the tenant seeks to recover 50% of the rent she paid for the past 8 months or 10 months including the time it took to come to hearing because she and her family were not provided with the quiet enjoyment the landlord is required to provide her with. She and her family have been tiptoeing around because they don't want the downstairs tenant to 'call the cops' on her. She can't have guests over, and work clients have been harassed by the lower tenants. She and her family don't feel safe living here or doing laundry in the common area.

The landlord provided the following testimony. They had once lived in the unit below the tenants and it was because of noise and smoking issues that the landlord moved out. There have been more than 5 sets of tenants who have lived below the tenant since the landlord moved out, each of them did so because the tenants above them were noisy.

The landlord tried to resolve the ant issue with a mixture of peanut butter, sugar and borax however the tenant accused her of trying to poison her family. The landlord tried to power wash the house at the tenant's request however when it was attempted, the tenant complained that it was being done during daylight hours. The tenant rebutted this testimony saying the time of day was not at issue but the time of year. She did not want the residue from the power washing to contaminate the food she was growing in the yard.

There is no issue with the bathtub leaking. The landlord inspected this issue a 'couple of years ago' and discovered there was no leak; the deteriorating molding around the bathtub is likely attributable to the tenant allowing water to drip from the shower curtain.

The material the tenant describes as 'garbage' at the side of the house will be used to do repairs on the house. Even if it were removed, the rodent and raccoon problem would persist. The tenant had already thrown out discontinued siding that matches her house without the landlord's consent. The 'broken down' car belongs to one of the tenants who cannot afford to fix it at the moment. It is parked in the spot assigned to him.

The landlord's spouse testified that lots of maintenance was done to the rental unit during the past 7 years the tenants have resided there. This includes a new fridge, a new stove, and two new washing machines.

Regarding storage space: both parties provided conflicting testimony about who could store what items where. The tenant claims that when the landlord moved out, she had a conversation with the landlord who allowed her to use it and the landlord testified that each of the 3 tenants is allowed to use specific storage spaces. Both parties agree that no formal arrangements for storage of any of the goods for the 3 sets of tenants was provided.

Analysis

First, the tenant seeks compensation for the landlord's failure to provide her with quiet enjoyment of the rental unit pursuant to section 28 of the *Act* which reads:

28 Protection of tenant's right to quiet enjoyment

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- a) reasonable privacy;
- b) freedom from unreasonable disturbance;
- c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- d) use of common areas for reasonable and lawful purposes, free from significant interference.

While the tenant has found the actions of the other tenants of the shared residential property upsetting, her unsatisfactory interactions with the other occupants of the

property are not necessarily subject to intervention by the landlord. Residing in a multi-unit rental property sometimes leads to disputes between the tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve this tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes this cannot be done in a way that protects the rights of all parties. In the case before me, I find the tenant has provided insufficient evidence to show the landlord has not protected this tenant's right to quiet enjoyment insofar as much as doing so would deny the right to quiet enjoyment of the landlord's other tenants. I find the landlord has not breached section 28 of the *Act* and the tenant's monetary claim for a 50% return of rent is dismissed.

Secondly, the tenant seeks an order that the landlord provide services or facilities. The tenant testified she is afraid the lower unit tenant will shut off her electricity whenever there is a dispute between them. The tenant acknowledged she does not know how the landlord would be able to provide her with the capacity to control her own breaker panel without having to do extensive electrical remediation. Although the tenant has provided evidence of a threat from the lower tenant that she would be inclined to shut power off to the dryer if the tenant did laundry outside agreed to hours, I find the tenant has provided insufficient evidence to show the threat has ever been followed through. I dismiss this portion of the tenant's claim.

Third, the tenant seeks the landlord do repairs to the rental unit or the residential property.

Section 32 of the *Act* states

Landlord and tenant obligations to repair and maintain

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.

The tenant submits that there is a leak in the master bathroom tub. As evidence of this, the tenant provided a photo of wall molding that appears to have once been wet. The landlord attributes this to the tenant allowing the shower curtain water to drip onto the molding. On a balance of probabilities, I find the tenant has failed to provide sufficient evidence to prove the tub leaks. This portion of the claim is dismissed.

The wood debris left on the side of the house is unsightly and potentially could harbor rodents as the tenant submits. I find I am in agreement with this and I order that the landlord remove the wood debris when the landlord performs the replacement of the railings and stairs in the spring/summer pursuant to section 32 of the *Act*.

As for the tenant's request that the unit be repainted, the tenant did not draw my attention to any photographs of the walls she stated were in need of repainting. Based on the testimony of the parties, I find the landlord has fulfilled his obligation to ensure the rental unit be maintained in a state of decoration and repair that complies with health, safety and housing standards. It is suitable for occupation by a tenant, with regard to the age, character and location of the unit.

Other than the testimony of the tenant, I do not find sufficient evidence of ant infestation. The tenant's application for the landlord to exterminate them is dismissed.

The evidence shows the 'broken down car' belongs to another tenant who is entitled to store his car in his assigned parking spot. The tenant's application to have it towed is dismissed.

Lastly, the tenant claims that her internet access was discontinued by the landlord. The evidence shows the tenant complained the internet speed slowed when the landlord vacated the property and that the tenant chose to find his own internet service provider with faster internet. The evidence provided also shows the landlord did what he could to ensure the speed of the internet was sufficient for the tenant and provided evidence of continuing to pay for it after vacating the property. While section 27 of the *Act* specifies that a landlord is to reduce the rent in an amount that is equivalent to the reduction in value of the tenancy if he terminates or restricts the facility, I find that the landlord continued to provide the internet facility to the tenant after he left. It was the tenant who chose to find his own superior internet service provider, not the landlord who arbitrarily discontinued the service. I find the tenant sought to upgrade to the service

that was being provided and I find the landlord is not obligated to compensate the tenant for terminating or restricting the internet service.

The decision to award the filing fee to the tenant is discretionary upon the arbitrator. I decline to award the filing fee pursuant to section 72 of the *Act*.

Conclusion

Both parties agreed to the following final and binding settlement of the following issues:

1. The landlord agrees to replace the outdoor stairs and railings when the landlord replaces the fibreglass surface of the deck area this spring or summer of 2020. The tenant agrees to allow the landlord to do this repair on 24 hours notice of the landlord's intention to do so.
2. The parties agree that the tenant will have her laundry completed between the hours of 8:00 a.m. and 9:30 p.m. on any given day, Monday through Sunday. The parties agree that this is a material term of the tenancy agreement.
3. The tenant agrees to move the gardening equipment out of the front patio area forthwith.
4. The landlord will provide the tenant, BH with this front patio area for her exclusive use.
5. The landlord will ensure BH takes down the yurt/tent that was installed on the common property of the residential property by February 2, 2020.
6. The landlord agrees to remove the full-length mirror stored in the laundry room on 24 hours notice to the tenant, within the next week. The tenant agrees to allow the landlord access through the rental unit to facilitate the removal of the mirror.

I order that the landlord remove the wood debris at the side of the residential property when the landlord performs the replacement of the railings and stairs in the spring/summer of 2020 pursuant to section 32 of the *Act*.

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: February 3, 2020

Residential Tenancy Branch