



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding C-Smart Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RR, RP, FFT**

Introduction

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

- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order that the landlord perform repairs to the rental unit pursuant to section 33; and
- authorization to recover their filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

As both parties were present service was confirmed. The parties each testified that they had been served with the respective materials and based on their testimonies I find that they were each served with all pertinent documents in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a reduction of rent for services or facilities agreed to but not provided?

Should the landlord be ordered to make repairs to the rental unit?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

This fixed-term tenancy began on April 1, 2011 and is scheduled to end on March 31, 2031. The current monthly rent is \$2,150.00 payable on the first of each month. There have been two previous hearings under the file numbers on the first page of this decision.

In a decision dated April 17, 2018 the terms of a settlement agreement between the parties is recorded. The terms include that:

1. The landlord agreed, at his own cost to a maximum of \$2,500.00, to install a security gate at the front entrance of the rental building, provided that it complies with the fire safety code and upon permit approval by the City;
 - a. The landlord agreed to submit a permit application to the City for the above installation, by June 7, 2018;
 - b. The landlord agreed to provide the tenants with price quotations for the above installation, prior to forwarding an application to the City;

In the decision dated August 15, 2018 it was found that the landlord had not yet installed a security gate in contravention of their agreement and the tenants were entitled to a rent reduction of \$500.00 for each month until the gate was installed.

The landlord said that a gate system was subsequently installed. The parties say that the gate initially installed by the landlord did not meet municipal standards and that an inspection by the municipal authorities identified multiple deficiencies in a report dated November 20, 2019. Among the issues identified on the report are:

- Have proper door hardware on front gate
- Intercom system put into working order immediately

The tenants submit that as at the date of the hearing a security gate that complies with all municipal standards has been installed but that it is not an appropriate system as the gate prevents guests from accessing the intercom system to announce their presence to the tenants. The landlord submits a letter from the municipal authority dated March 12, 2020 stating no violations as evidence that repairs have been completed.

The parties also submit that the intercom system for the building is not functioning. The landlord testified that no intercom system has been available for the building since at least 2015 when they began managing the property. The tenants testified that the

intercom system was previously functioning and that they have made repeated requests to the landlord to fix the system.

Analysis

Section 32 of the Act provides that a landlord must provide and maintain property in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes the property suitable for occupation by the tenant.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

This section, in conjunction with section 65 (1)(f) of the *Act* allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement.

While I accept the evidence of the landlord that they have installed a gate system that complies with municipal standards I find that this does not necessarily make the property suitable for occupation by the tenants. Simply having a functioning gate is inadequate to ensure that the rental unit is suitable. Based on the evidence of the parties the gate, when closed, prevents access to the non-functioning intercom system for the building. Effectively, when the gate is closed and locked visitors have no means of announcing their presence to the tenants. I do not find this to be a particularly suitable or reasonable arrangement.

I further find the landlord's position that the intercom system has not been functioning for many years to be a poor excuse for not enacting repairs in a timely manner. I do not find the state of the rental building as described to be reasonable. There must be a method by which visitors to the property can have their presence known to the tenants while also ensuring security through having a gate preventing free access. I find that it is open to the landlord whether to repair the existing intercom system or replace it with a suitable alternative, however there must be some method implemented to allow the tenants to be contacted by visitors from outside the security gate. Whether this repair takes the form of moving the gate or installing a new intercom panel accessible prior to

being granted entry is irrelevant but the landlord must make some provisions to the current arrangement.

I therefore find it appropriate to order that the landlord implement some solution that maintains security of the building and providing a functioning communication system.

I accept the evidence of the tenants that the issue with both the gate and the intercom system has been informed to the landlord for a number of years. The tenants gave some evidence on the inconvenience the situation has caused them. The tenants suggest that a rent reduction of \$500.00, approximately 25% of the monthly rent and equivalent to the rent reduction granted in their earlier hearing to be appropriate under the circumstances. I would agree. I order that the tenants are authorized to reduce their monthly rent by \$500.00 as of April 1, 2020 and for each successive month thereafter until the landlord implements a gate and communication system that addresses the need for security and screening visitors.

Should a dispute arise as to the extent to which the repairs ordered have been completed, I order that the rent remain at the previous month's reduced rent until such time as the landlord has applied for and obtained an order from an arbitrator appointed under the *Act* as to whether the repairs have been completed in accordance with the previous arbitrator's decision. The landlord is at liberty to apply for a determination as to the landlord's compliance with the previous arbitrator's decision once the landlord has undertaken the repairs ordered by the previous arbitrator.

As the Tenants have been successful with its application I find that the Tenants are entitled to recovery of the **\$100.00** filing fee and the Tenants may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The landlord is ordered to make repairs to the gate and communication system for the rental property.

I issue a one-time monetary award in the amount of \$100.00. The tenants are authorized to reduce their next monthly rent payment to the landlord by this amount.

I order that the monthly rent for this tenancy is reduced by \$500.00, commencing April 1, 2020 and continuing each month thereafter until such time as the repairs are completed.

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: March 19, 2020

Residential Tenancy Branch