



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, RR, MNDCT, OLC, FFT

Introduction

This hearing dealt with the Application for Dispute Resolution filed by the Tenant under the *Residential Tenancy Act* (the “Act”). The Tenant’s Application for Dispute Resolution was made on July 2, 2020. The Tenant applied to dispute a rent increase, to reduce the rent for repairs, services or facilities agreed upon but not provided, for compensation for a monetary loss or other money owed, for an order for the Landlord to comply with the Act, and to recover the filing fee paid for this application. The matter was set for a conference call.

Both the Landlord and Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Landlord and Tenant agreed that they have exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Preliminary Matters – Issue Withdrawal

At the outset of this hearing, the Tenant withdrew their application to dispute a rent increase, for compensation for a monetary loss or other money owed, and for an order for the Landlord to comply with the Act.

I will proceed with this hearing on the Tenant's remaining claims to reduce the rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee paid for this application.

Issues to be Decided

- Is the Tenant entitled to a rent reduction repairs, services or facilities agreed upon but not provided?
- Is the Tenant entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement records that this tenancy began on May 15, 2017, as a month to month tenancy. That rent in the amount of \$900.00, is to be paid by the first day of each month, and that the Landlord is holding a \$450.00 security deposit for this tenancy. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

Both parties agreed that the written tenancy agreement did not include access to laundry facilities; however, they both agreed that from the beginning of this tenancy until mid-May 2020, the Tenant had been granted permission to use the laundry facilities in the adjoining unit at no additional cost.

The parties also agreed that a new renter took over the adjoining rental unit in May 2020, and no longer wanted to share the laundry facility with this Tenant. Both the Tenant and the Landlord agreed that a rent reduction of \$75.00 a month, due to the removal of the Laundry facilities for this tenancy, had originally been agreed to and that that the Tenant had received this rent reduction for May and June 2020.

The Tenant testified that they had gone back to the Landlord, requesting an increase in the rent reduction, as the \$75.00 they had initially agreed to did not cover their costs to do laundry at a local landlady facility. The Tenant testified that when they asked for an increase in the rent reduction, the Landlord had been upset with this request and responded by removing the rent reduction altogether.

The Landlord agreed that they had originally agreed to a rent reduction for the removal of the laundry facility and that they had removed the agreed-upon \$75.00 a month rent reduction when the Tenant had requested a larger amount.

The Landlord argued that the use of the laundry facility was never a term of this tenancy agreement and that they had just been kind in allowing the Tenant to use the laundry facility in the adjoining suite. The Landlord testified that the laundry facilities are part of the adjoining suite and that the previous renters had not minded this Tenant using their laundry facilities but that the current renter of that unit had refused to share these facilities. Additionally, the Landlord testified that they had only provided the \$75.00 rent reduction due to COVID-19.

The Landlord continued in their argument, stating that since it was not a part of the written tenancy agreement, the Tenant was not entitled to a rent reduction for the removal of the laundry facilities.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties that use of a laundry facility had been provided to this Tenant between May 2017 and mid-May 2020, a period of roughly 35 months.

I also accept the agreed-upon testimony of these parties that the use of this laundry facility had been removed, by the Landlord as of mid-May 2020, and that a \$75.00 a month rent reduction had been agreed to and provided to the Tenant for the months of May and June 2020.

I acknowledge the Landlord's argument that they were just being kind to the Tenant when they allowed the Tenant to use the laundry facility's in the adjoining rental unit. However, where I can understand and appreciate this action of the Landlord, I can not overlook the legal rule of Contra Proferentem.

Contra Proferentem is a rule used in the legal system when interpreting a contract, which basically means that any ambiguous clause contained in a contract will be interpreted against the party responsible for drafting the clause. In this case, I find that it was the Landlord's responsibility to draft a clear contract for this tenancy.

I agree that the Tenancy agreement signed between these parties, clearly did not include the use of laundry facilities; however, when those facilities began to be provided, the Landlord, had a duty as the drafter of this contract, to ensure that this Tenant clearly understood the conditions surrounding the use of the laundry facilities. I find that the terms of this tenancy agreement surrounding laundry facilities became ambiguous when it was initially contracted that laundry facilities would not be provided, but then laundry facilities were provided for a term 35 months, almost three years.

I find that the Landlord had a duty to draft an addendum to this tenancy agreement, clearly outlining all conditions and limitations surrounding the use of these laundry facilities by the Tenant. However, in this case, that was not done.

In the absence of any documentary evidence, to show, that the Landlord had clearly communicated to the Tenant that the use of these laundry facilities was a personal kindness that could be removed at any point, I find that it was reasonable that this Tenant, after 35 months of uninterrupted use of these laundry facilities, would have believed that this service had become part of their tenancy.

Based on the facts that use of a laundry facility had been provided with this tenancy from its start date, that use of this facility was continually provided for a period of 35 months, and combined with the fact the Landlord initially provided a rent reduction due to the removal of the Tenant's use of this laundry facility; I find that, even though this service was not initially contracted to in the tenancy agreement, the laundry facility had become an included service to this tenancy agreement through the Landlord's action of providing this service to the Tenant.

Accordingly, I order that the originally agreed to rent reduction \$75.00 be reinstated for this tenancy, due to the removal of the Tenant's access to the previously provided laundry facilities.

I order that the rent for this tenancy is reduced to \$825.00 per month, commencing May 15, 2020, due to the removal of the laundry facilities for this tenancy.

As the parties to this dispute have agreed that the rent reduction of \$75.00, per month, had already been provided to the Tenant for May and June 2020, I award the Tenant the recovery of the retro-active rent reduction for July and August 2020, in the amount of \$150.00.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

I grant permission to the Tenant to take a one-time reduction of their next month's rent, in the amount of \$250.00, consisting of the retro-active rent reduction for July and August 2020, in the amount of \$150.00 and the recovery of the \$100.00 filing fee for this hearing, in full satisfaction of this amounts awarded above.

Conclusion

I order that the monthly rent for this tenancy is reduced to \$825.00 per month.

I grant permission to the Tenant to take a one-time reduction of their next months rent in the amount of \$250.00, in full satisfaction of the amounts awarded above.

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: August 6, 2020

Residential Tenancy Branch