



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, PSF, OLC, RR

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on November 23, 2020, wherein she sought the following relief:

- an Order that the Landlord:
 - make emergency repairs to the rental unit;
 - provide services or facilities as required by law;
 - comply with the *Residential Tenancy Act* (the "Act"), the *Residential Tenancy Regulation*, and/or the residential tenancy agreement; and,
- an Order that the Tenant be authorized to reduce her rent for the cost of repairs, services or facilities.

The hearing of the Tenant's Application was scheduled for 9:30 a.m. on February 12, 2021. The Tenant called into the hearing, as did the Landlord, P.B., his lawyer, N.R. and the building janitor, M.S. All in attendance were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. *Rule 4.2* of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Tenant named the Building Name and a construction company as Landlord. A review of the tenancy agreement confirms the Landlord is an individual, P.B. I therefore Amend the Tenant's Application to correctly name the Landlord as P.B.

Preliminary Matter

The Tenant confirmed that she did not seek an Order for emergency repairs as temperature of the water in the washing machine is not an emergency repair as defined by section 33 of the *Act*. Accordingly, the Tenant's request for an Order that the Landlord make emergency repairs is dismissed without leave to reapply.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord for loss of services and facilities?
2. Should the Landlord be ordered to comply with the *Act*, *Regulations* and/or tenancy agreement and provide services or facilities?

Background and Evidence

This tenancy began June 1, 2009. Currently rent is \$998.74 per month, in addition to \$40.00 in parking.

The nature of this claim relates to the Tenant's allegation that she has been denied adequate hot water for washing her clothing in the common laundry area of the rental building.

The residential tenancy agreement provided that the Tenant was to have access to a washer and dryer in the common area. The Tenant stated that there are approximately

20 units in the rental building. She further stated that there is one laundry room for all 20 units which includes two washers and two dryers.

The Tenant claimed that there is no hot water wash available at the rental unit. She testified that for approximately 8 years, she was unaware and believed that she was using the hot water cycle. The first time she noticed that the temperature was not hot was in approximately 2017 or 2018 when she had to add something to the laundry and at that time noticed that the water was not hot. She brought in her kitchen thermometer and discovered that the temperature was approximately 95 degrees.

The Tenant stated that she brought this to the Landlord's attention at the time, although she was not able to provide evidence of those conversations as she did not keep her emails from that time. She noted that when she brought this to the Landlord's attention again in March of 2020 (due to the COVID-19 pandemic) she referenced those emails. The Tenant stated that in response to her concerns she was informed by the Landlord that the water was factory settings.

The Tenant confirmed that she also repeated her measuring on other occasions. She stated that the temperature of the hot water that is going into the washing machine, is hot, but the washing machine only adds about 6 inches of that water, and then it shuts off and then fills with cold water such that the temperature is then barely lukewarm.

The Tenant submitted that as hot water and laundry are included in her tenancy agreement, she should have hot water in the shared common laundry area. She also submitted that the average person who rents an apartment has an expectation and assumption that they can choose the cycle that is appropriate for what they are laundering. The Tenant also noted that there are certain items (bedding and towels for instance) that need to be laundered in hot water (which she argues is 140 – 160 degrees) to kill fungus, kill fecal matter, mites, yeasts, fungus. She noted that there are people who are washing their dog blankets before she washes her dish cloths such that it is essential that she have hot water.

In response to Tenant's claim, the Landlord testified as follows. The Landlord confirmed that the machines in the laundry area are the same washing machines as when the tenancy began. The Landlord stated that he does not own the washers and dryers, as they are owned by one of his partners and are coin operated.

The Landlord confirmed that neither he, nor anyone else employed by him, have taken steps to restrict the hot water in the washing machine. He stated that they have “done the exact opposite”. He stated that the units come pre-set from the manufacturer. He stated that to ensure the water was as hot as possible, they disconnected the cold-water portion on January 21, 2021. A copy of the invoice from the appliance repair person was provided in evidence.

The Tenant confirmed that since January 21, 2021 the temperature of the water is 130 but argued that the WHO and virologists say this is insufficient.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;

- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The Tenant alleges that she has been denied adequate hot water for washing her clothing. She seeks an Order that the Landlord provide this facility as well compensation pursuant to section 65(1)(b) which reads as follows:

Director's orders: breach of Act, regulations or tenancy agreement

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

...

(b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;

The tenancy agreement provides that the Tenant has access to shared laundry facilities. The agreement also provides the Tenant is to have hot water. The Tenant submits that the inclusion of these two means she is entitled to water of a certain temperature to wash her laundry. She also argues that as the washing machine has a “hot” cycle, it is reasonable to assume the temperature of the water will be sufficient to sanitize her items and kill certain bacteria, pathogens, etc.

The Landlord testified that the washing machines were the same machines as when the tenancy began in 2009. He also testified that the washing machine temperature were set to “factory settings”. He denied taking any steps to reduce the temperature of the water and stated that on January 21, 2021 they disabled the cold-water feature to ensure the hot water wash could be as hot as possible.

On balance, I find the Tenant has failed to prove the Landlord breached his obligations under the *Act*, the *regulations*, or the residential tenancy agreement. The Tenant was promised access to a shared laundry facility and she has had continuous access to this facility since the tenancy began. I am not persuaded the Tenant was guaranteed a

certain temperature for washing. While the tenancy agreement provides that she is entitled to hot water, I find this means she was not expected to pay more for hot water in her rental unit and that this was included in her rent payment; I am not persuaded that this means she was entitled to water of a certain temperature in the washing machines in the shared laundry area.

I also accept the Landlord's testimony that the washing machines are the same ones that were present when the tenancy began such that he has provided uninterrupted access to laundry facilities in the rental building. In doing so I find he has fulfilled his obligation pursuant to the tenancy agreement.

I also accept the Landlord's testimony that the washing machines were set to a factory setting and that he did not restrict the Tenant's access to hot water during certain cycles. The Tenant argues that the cycles on the washing machine are misleading as she assumed a hot cycle would use water of a certain temperature. She also alleges that the temperature of the water is insufficient to properly sanitize some items. While the washing machines may be inaccurate in terms of the degree of cleaning they provide, I am not persuaded this is evidence the Landlord has breached any obligation under the *Act*, the *Regulations*, or the tenancy agreement.

The parties agree that the Landlord has disconnected the cold water to ensure the "hot" cycle is as hot as possible. He testified that the temperature is now 130 degrees Celsius. I find the Landlord has taken reasonable steps to address the Tenant's concerns and I therefore decline the Tenant's request that I order the Landlord to take remedial action.

The Tenant also sought monetary compensation for loss of services or facilities. As I have found she has had uninterrupted access to laundry facilities, I dismiss her monetary claim.

Conclusion

The Tenant confirmed she did not intend to seek an order for emergency repairs; this claim is therefore dismissed without leave to reapply.

The Tenant's request for an Order that the Landlord comply with the *Act*, the *Regulations* or the tenancy agreement and provide water of a certain temperature in the shared laundry room is dismissed without leave to reapply.

As the Tenant had had uninterrupted access to laundry facilities throughout her tenancy, the Tenant's request for monetary compensation pursuant to section 65 of the *Act* is dismissed without leave to reapply.

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 12, 2021

Residential Tenancy Branch