Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT OLC PSF RR

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of $500.00 for harassment, for an order directing the landlord to provide services or facilities required by the tenancy agreement or law, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and for a rent reduction of $125.00 per month.

The tenant, landlord and two witnesses for the landlord MS and NS (witnesses), the latter of which did not testify, attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence in documentary form prior to the hearing and to provide testimony during the hearing. Only the evidence relevant to my decision has been included below.

Neither party raised any concerns regarding the service of documentary evidence during the hearing. I find the parties were sufficiently served as a result as both parties confirmed having been served with documentary evidence and having the opportunity to review that evidence prior to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

At the outset of the hearing, the landlord's surname was corrected to the correct spelling pursuant to section 62(3)(c) of the Act.

In addition, the tenant was unprepared, disorganized with their documentary evidence and referred to documents not submitted in evidence for my consideration, such as a receipt of laundry expenses.

Furthermore, the parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

In addition to the above, I find that the tenant's claim for harassment has already been heard and that the *res judicata* applies. As the parties were informed during the hearing, I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

With respect to res judicata, the courts have found that:

> "…the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."

In light of the above, and considering the previous decision presented by the parties during this hearing (previous decision), I have not re-heard the matters already dealt with under the previous application. The previous decision file number has been included on the style of cause for ease of reference. Given the above, I dismiss the tenant's monetary claim of $500.00 for harassment without leave to reapply, due to the legal principle of *res judicata*, as a previous Arbitrator has already dismissed that claim due to insufficient evidence, **without leave to reapply.**

Issues to be Decided

- Has the tenant provided sufficient evidence to support a rent reduction of $125.00 per month for loss of laundry facilities?
- Should the landlord be directed to provide services or facilities?

- Should the landlord be directed to comply with the Act, regulation or tenancy agreement?

Background and Evidence

There is no written tenancy agreement between the parties. There is no dispute that a verbal tenancy agreement was formed in 2009, when the tenant moved into the rental unit, which the tenant describes as a partial basement suite.

The tenant has claimed $125.00 for loss of laundry facilities; however, confirmed that they did not submit any receipts for my consideration on how much they spent on laundry on the one occasion the tenant stated they have gone out to do their own laundry.

The landlord testified that the tenant was served with a notice dated November 30, 2020, which was a week after the previous decision dated November 23, 2020, terminating the tenant's laundry facilities and reducing their $550.00 rent by $50.00 as compensation for the terminated laundry services (laundry notice). The parties agreed that since 2009, the tenant had access to the laundry on Tuesdays, which was one day per week. The laundry notice indicates that effective January 1, 2021, the monthly rent will be reduced by $50.00 to $500.00 per month. The tenant confirmed that they received the November 30, 2020 laundry notice.

The tenant does not agree with the amount the rent has been reduced and wants the laundry reinstated.

Analysis

Based on the above, and on a balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Firstly, after considering the evidence before me, section 27 of the Act applies and states:

> **Terminating or restricting services or facilities**
>
> **27** (1) A landlord must not terminate or restrict a service or facility if
>
> (a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
>
> (b)providing the service or facility is a material term of the tenancy agreement.
>
> (2)A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
>
> (a)gives 30 days' written notice, in the approved form, of the termination or restriction, and
>
> (b)reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Firstly, there is no written tenancy agreement between the parties and as a result, I find the laundry is not a material term as the tenant is unable to prove that a term is a material term when there is not written tenancy agreement. Secondly, I find that laundry

is not an essential facility as laundry facilities exist in the community to take laundry to and there is no dispute that laundry use was already restricted to one day per week, prior to the laundry notice.

In addition, I find the tenant has provided no supporting documentary evidence to support their claim for a rent reduction of $125.00 per month as the tenant provided no receipts or other supporting documents that they spend $125.00 for laundry per month. As a result, I find the tenant has provided insufficient evidence to support their claim for a monthly rent reduction of $125.00, **without leave to reapply.**

I have also considered that laundry is not listed in any of the Ministry documents supplied by the parties and as a result of the above, and the evidence submitted by the parties, I find that a 9% reduction of rent from $550.00 to $500.00 for the termination of weekly access to laundry facilities is a reasonable reduction and therefore, I find the tenant has provided insufficient evidence to support an order for the landlord to reinstate laundry facilities as I find the laundry notice is authorized under section 27 of the Act. In other words, I find the tenant has been compensated a reasonable amount under the Act for the termination of the previous weekly laundry access.

Given the above, I find the tenant has provided insufficient evidence that the landlord has breached the Act, regulation or tenancy agreement, other than section 13(1) of the Act requires that all tenancy agreement since January 1, 2004 be in writing. Therefore, **I caution** the landlord to ensure that all future tenancy agreements are in writing.

As the filing fee was waived, it is not granted.

Conclusion

The harassment portion of the landlord's claim in the amount of $500.00 has been dismissed due to *res judicata* described above.

The remainder of the tenant's application is dismissed, without leave to reapply due to insufficient evidence.

The landlord is cautioned to ensure that all future tenancy agreements are in writing.

This decision will be emailed to both parties at the email addresses confirmed by the parties during the hearing.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 8, 2021

Residential Tenancy Branch