



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **PSF, LRE, RR, FFT**

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to have the landlord provide services or facilities required by the tenancy agreement or law, to be allowed a rent reduction for services or facilities agreed upon but not provided, to suspend or set conditions on the landlord's right to enter the rental unit and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties affirmed that they are complying with Residential Tenancy Branch Rules and not recording the hearing.

The landlord confirmed receipt of the tenant's evidence. The tenant stated that they received evidence from the landlord by email; however, they did not review it as it does not comply with the rules of procedures.

In this case, I am excluding the landlord's evidence as it was not served in accordance with the Act, and I find this not prejudicial to the landlord because it is simply a duplicate of what the tenants has already submitted.

At the outset of the hearing. The tenant stated they are not proceeding with the issue of the landlord providing services or facilities as they have already had those services placed in their name. The tenant stated that they are seeking a rent reduction for the loss. Therefore, I dismiss this portion of the tenant's claim.

### Issues to be Decided

Is the tenant entitled to a rent reduction?

Should the landlord be suspended or set condition on the landlord's right to enter the rental unit?

### Background and Evidence

The tenancy agreement submitted in evidence show the tenancy commenced on May 1, 2020. Rent in the amount of \$1,900.00 is payable on the first of each month. The tenant paid a security deposit of \$950.00. Filed in evidence is a copy of the tenancy agreement.

The tenant testified that the landlord is in breach of the tenancy agreement as electricity and WIFI were to be included in the rent, which is shown in the advertisement.. The tenant stated that they were informed by the landlord that they would no longer be providing those services and they were cut off on January 6, 2021. The tenant stated that they have to pay \$100.00 per month for WIFI and electricity is another \$100.00 per month. The tenant stated that the rent is also to high when they compare their rent to other rental units. The tenant stated that they should be entitled to a rent reduction in the amount of \$300.00 per month.

The tenant testified that on September 29, 2020, the landlord attend the premise to serve them with documents and they did not arrange an appointment.. The tenant stated that the landlord used their copy of the Fob to access the building and to use the elevator. The tenant stated that the landlord kept knocking on the door and making noise. The tenant stated that the landlord was yelling and inserted their key into the door. The tenant stated that the landlord did not enter into the premise.

The landlord testified that the electricity and WIFI were not included in the rent. The landlord stated that they believe this was going to be a short-term rental and those service remained in their name. The landlord stated that they did not invoice the tenant for these services because they were giving the tenant a six-month incentive as they wanted the tenant to leave at the end of the six-month fix term. The landlord stated because the tenant wanted to remain longer on a month-to-month basis they were no longer going to provide the incentive and are relying upon the written tenancy agreement which show these were not included in the rent.

The landlord testified that they were at the premise to serve the tenant with an eviction notice. The landlord stated that the tenant did not want to accept service because they did not want to move. The landlord stated that they never tried to enter the premise and it was the tenant that was yelling at them.

### Analysis

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

### **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.**

I have reviewed the tenancy agreement; it shows electricity and WIFI are not included in the rent. While I accept the advertisement shows otherwise; however, an advertisement is not a legal contract, such as the tenancy agreement and this agreement supersedes any advertisement. If the tenant was not in agreement with the tenancy agreement they should have had it changed or not entered into the agreement. I find the tenant has failed to prove the landlord has breached the tenancy agreement or the Act.

While I accept the landlord paid for these services for a period of time; however, there was no requirement for the landlord to do so. I accept the evidence of the landlord that this was an incentive and not a requirement under the tenancy agreement. I find the landlord has the right to enforce the signed legal contract, the tenancy agreement.

Further, I find I have no authority under the Act, to interfere with a tenancy agreement on the issue of the rent payable under that agreement, simply because the tenant can find rental units at a lower rent, that is not for me to consider.

Based on the above, I dismiss the tenant's application for a rent reduction.

**Landlord's right to enter rental unit restricted**

**29** (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a)the tenant gives permission at the time of the entry or not more than 30 days before the entry.
- (b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i)the purpose for entering, which must be reasonable;
  - (ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees

**How to give or serve documents generally**

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a)by leaving a copy with the person; ...

I am not satisfied that the landlord breached section 29 of the Act on September 29, 2020. The landlord was at the premise for a lawful purpose, which was to serve the tenant with an eviction notice in accordance with the service provision under section 88 of the Act. The landlord is not required under the Act to give the tenant notice simply to attend the premise to serve document, this is a lawful purpose. A landlord is only required to give the tenant notice if they are planning to enter the rental premise. This was not the reason for attendance.

Further, the tenant was at home at the time, if the noise of the landlord knocking on the door was bothersome, that noise would not have occurred if the tenant simply answered the door and accepted the document. Rather, than to avoid service. While I accept the tenant provided a statement from their friend QD ,who was on the phone with the tenant at the time, it does not support an illegal entry, it states in part “my friend didn’t open the door”.

While the tenant alleged the landlord was yelling ,and this is supported by the statement of QD; however, QD, was not at the rental unit at the time, and was not at the hearing to

provide affirmed testimony, answer questions and have their credibility assessed. The landlord denied they were yelling, and their testimony was that it was the tenant yelling.

Even if I accept that it was more likely than not that both parties played a role in poor behaviour at the time. I cannot find the landlord breached section 29 of the Act, as the tenant's evidence was the landlord never entered the rental unit. Therefore, I find the tenant has failed to prove the landlord has violated the Act.

As the tenant has not been successful with any portion of their claim, I decline to award the tenant the cost of the filing fee.

### Conclusion

The tenant's application 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: April 06, 2021

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Residential Tenancy Branch