# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes OLC, FFT

Introduction

The tenant filed an Application for Dispute Resolution on February 18, 2021 seeking the landlord's compliance with the legislation and/or the tenancy agreement. Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on May 25, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Both parties confirmed they received the prepared evidence of the other. The tenants provided one additional document to the Residential Tenancy Branch the day prior to the hearing. As per the *Residential Tenancy Branch Rules of Procedure* Rule 3.17, I will not consider this piece, and there is no reference to it in the decision below.

The tenants confirmed their receipt of the evidence prepared by the landlord. This was on May 18, 2021, seven days in advance of the hearing. By Rule 3.15, I accept the landlord's evidence into the record and where necessary it receives consideration in the decision below.

Issue(s) to be Decided

Are the landlords bound to comply with a specific section of the legislation and/or tenancy agreement, pursuant to s. 62 of the *Act*?

Are the tenants entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The tenants provided a copy of the tenancy agreement. Both parties signed the agreement on August 25, 2020 for the tenancy starting on November 1, 2020. The tenancy was for a fixed term set to end on October 31, 2021. The monthly rent was $2,500. The agreement stipulated that the utilities would be divided equally among 10 people who were living at the property. The tenants paid a security deposit of $1,250 and a pet damage deposit of $1,250.

The tenants and landlords agree that the unit is that existing in a property with two other units. A floor plan submitted by the landlord shows a central laundry room, labelled as a "shared laundry room". There are two alternate entries into this room, one of which is "locked only opened when in use by upper tenants". Within three separate units, in which the tenants' own agreements provides theirs is the "main" unit, there are 10 residents in total according to the tenants.

On their Application, the tenant provided that the landlords tried to change the tenancy agreement. Because they did not agree to this, the landlord restricted access to a facility, and entered the unit without proper notice. Because of the change in access, this left the tenant's own unit unsafe and open for all other building residents.

The timeline, as provided in the tenants' own written submission, is as follows:

- on January 3 the landlords wanted the tenants to agree to a new apportionment of the utilities costs, from their 20% of the total, to 50%.
- on January 6th the tenants advised the landlords they did not agree to this
- the tenants presented two options: increase to 35% with an agreement for needed repairs; or an end to the tenancy agreement
- the landlord informed the tenants on January 21 that they would now have to share their laundry with all other building residents
- the tenants then made another attempt to end the agreement
- the landlord changed access to the laundry room, in effect removing the door lock, leaving access open to it for all building residents
- this left the tenants' own unit unsafe whereby all other residents could freely enter the tenants' own unit

- on March 8, the tenants attempted to end the tenancy with a mutual agreement; however this was not successful.

Prior to January 21, the tenants had exclusive access to the laundry room. The tenants provide that this "restricts [their] use to a material facility." A witness for the landlords who made statements in the hearing stated that they, as another resident in the building, had full access to the laundry area, and it was not until the tenants here began their tenancy that this witness' access to the laundry area was cut off.

In the hearing, the tenants questioned their own witness about their experience living in the same property. This witness presented that they had a similar experience, having been presented with a challenge immediately upon their move in, and at most stages thereafter.

At this stage in the tenancy, the tenants ask for a "break in the contract and allow [their] leave and have [their] full security deposit back." They desire to move out on June 30, 2021, and "want to make sure [they] end the agreement rightly."

In their submissions, the landlords referred to a floorplan they provided for reference. They provided that there was an error on the tenancy agreement – they wrongfully put the shared 10% for each person for all utilities, when that stipulation should have been only for water usage.

The landlord maintained their changes to the laundry room access were in the interests of all tenants, and they were advised they could not restrict such access for any of the residents in the building. They proposed a method involving changing locks in the past; however, the tenants did not agree with this and the police were involved. The landlord reiterated that their changes to laundry room access were not in retaliation for the tenants' non-agreement to their proposed change in utilities amounts.

The landlord's summary position on the tenant's request to end the tenancy is that "the tenants' requests would be breaking the lease." In effect, this would be releasing the tenants from any of their obligations under the *Act* and the tenancy agreement, all with a return of the full deposit amounts.

Analysis

In the hearing, I made each party aware of the important stipulation of s. 5 of the *Act*:

(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

There is no evidence the tenants have now been paying a higher amount of utilities. They did not present that this was the case. My understanding of their description of this issue in earlier discussions with the landlord was that the tenants' disagreement with the landlords' proposal was the reason for the landlord making changes to the laundry room setup and access. That was an earlier attempt at renegotiation by the landlord after the signing of the agreement. There is no record that the tenants were paying higher utility amounts as a result.

I find the tenants' assertion that the laundry room access changes were retaliation by the landlord to be speculation. I accept the landlords' viewpoint in that all residents at the property shall have access to laundry facilities.

The tenants here reiterated they signed the tenancy agreement with the notion they would have individual laundry facilities. The simple fact is this is not the case. There is nothing prescribed in the *Act* to state this is an obligation of the landlord, and nothing in the tenancy agreement which the tenants provided state that is the case. On this issue there is nothing to rectify, and I am satisfied the tenants do have access to laundry facilities. The tenants shall not block or otherwise hinder the other residents;' access to these facilities.

It appears the landlord attempted to make a change to the building set-up to ensure the tenants' individual unit is locked to other residents. This is in keeping with the *Act* s. 29(c), that of exclusive possession of the rental unit. The landlord is obligated to ensure this important facet of the tenants' quiet enjoyment is in place. The tenants shall not prevent the landlord from making changes to the door locks or property plan to ensure that happens.

Reciprocally, the landlord is obligated to ensure the tenant's have exclusive possession of the rental unit. This means the unit is the exclusive access of the tenants only, and no other residents in the building shall have open access to the tenants' own unit. In this regard, the landlord must comply with the *Act* and the tenancy agreement. As of the tenant's updated submission dated May 6, they stated the access was still present. I find this is as shown in their submitted video.

To be clear, the tenants here did not apply for relief or compensation because of a reduction in the value of the tenancy agreement. Rather, they made their intentions

known both in their written submission and in their oral testimony: this is for the tenancy to end, and they wish to receive the full amount of their deposits back.

The tenants wish to have authorization to end the tenancy prior to the end of the fixed term that expires on October 31, 2021. The provisions for the tenant ending a fixed-term tenancy agreement are set in s. 45(2). There is no earlier end to the tenancy agreement due to this provision. With their submissions and evidence in this hearing, the tenants have not shown that the landlord failed to comply with a material term of the agreement, which otherwise *would* allow the tenants to end earlier, as per s. 45(3).

The tenants' proposal to unilaterally end the tenancy and receive the full deposits is an avoidance of the provisions of the *Act*. There is no allowance for an end to the tenancy in the manner which the tenants propose. Additionally, the dispensation of the security and pet damage deposits is governed by s.38, and I do not grant authorization for their full return prior to the end of this tenancy.

The only avenue open to the tenants is by mutual agreement to end the tenancy, as provided in s.44(c). The return of deposits does *not* form part of that agreement, and as stated above that is governed by s. 38. Also note the tenants may still be responsible for rent up until the end of the fixed term if the rental unit remains vacant because of this, with no new tenants. I note that in the hearing the tenants pledged their commitment to assist the landlord in finding new tenants.

I find the tenants' access to laundry facilities is not restricted. In this regard, there is no need to order the landlords' compliance with the legislation and/or the tenancy agreement. I find the landlords have not otherwise imposed restrictions or set other conditions unilaterally that affect either party's rights or obligations. At the same time, I find the landlords *are* obligated to ensure the tenants' exclusive use of their rental unit is in place. No other tenants shall have a means of access to the tenants' own individual unit.

Because the tenants are marginally successful in their Application, I dismiss their claim for reimbursement of the Application filing fee, without leave to reapply.

## Conclusion

With my review of the evidence and oral testimony of the parties, I so order the landlord must ensure that the tenants have exclusive access to their own unit. Any other

opening, or door must be built or repaired by the landlord to ensure this basic term of the tenancy agreement and provision in the *Act* is fulfilled.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 27, 2021

Residential Tenancy Branch