Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, AAT, OLC, PSF, MNDCT, RR, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for:

- an Order for repairs to the unit, site, or property, having contacted the landlord in writing to make repairs, but they have not been completed;
- an Order to allow access for the Tenant or their guests;
- an Order for the Landlord to Comply with the Act or tenancy agreement;
- an Order to provide services or facilities required by the tenancy agreement or law;
- a Monetary Order of $1,000.00 for damage or compensation under the Act;
- an Order to reduce the rent for repairs, services or facilities agreed upon but not provided, and
- recovery of the $100.00 cost of their Application filing fee.

The Tenants, P.C. and A.C., and the Landlords, E.L and S.Q., appeared at the teleconference hearing and gave affirmed testimony. In the first hearing, the Tenants said that they were in the hospital with Covid, and as such, they asked for an adjournment of the hearing. The Landlords agreed to the adjournment. I sent an interim decision setting out what had happened in the first hearing, and sending a new Notice of Hearing for the reconvened hearing.

The Tenants and the Landlords appeared at the reconvened teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter

are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and they confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the reconvened hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated multiple matters of dispute on their Application, and as we only had an hour for this hearing, I asked them to indicate which two of their claims were the most important for us to review in our limited time. The Tenants said that the third and fourth claims were the most important to them:

- An Order for the Landlord to Comply with the Act or tenancy agreement; and
- An Order to provide services or facilities required by the tenancy agreement or law.

I will also consider whether the Tenants are eligible for recovery of the $100.00 Application filing fee.

These are the claims we reviewed in the reconvened hearing. The Tenants' other claims are dismissed with leave to reapply.

Issue(s) to be Decided

- Should the Landlords be Ordered to comply with the Act or tenancy agreement, and if so, how?

- Should the Landlords be Ordered to provide a service or facility, and if so, which one(s)?

Background and Evidence

The Parties agreed that the fixed term tenancy between them began on July 17, 2020, ran to July 31, 2021, and then operated on a periodic or month-to-month basis. The Tenants said they had lived there for the prior 14 years in a tenancy with the selling landlord. The new Landlords purchased the residential property on July 17, 2020.

The Parties agreed that the Tenants are required by the tenancy agreement to pay the Landlords a monthly rent of $2,135.00, due on the first day of each month. They agreed that the Tenants paid the Landlords a security deposit of $865.00, and a $200.00 pet damage deposit.

#1 LANDLORD TO COMPLY WITH ACT OR TENANCY AGREEMENT

The issue between the Parties relates to the Tenants' use of the garage and the laundry machines in the garage. The Tenants said that they used the laundry for 14 years prior to this Landlord purchasing the property in July 2021. The Tenants said that they need to use the washer and dryer at the property, or they will have to move.

Both of the Parties submitted a copy of their tenancy agreement. On page two in section 3 of the agreement, it indicates which services and facilities are included in the rent. The laundry facility was not checked off on the new tenancy agreement as being included.

The Tenant said:

> We were presented with a contract by a realtor who represented himself as the representative for [the new Landlords]. This has since been questioned by the Landlord, and in fact, they have claimed that the document to share the garage was forged by ourselves – me, principally – as [E.L.] says that my handwriting matches that of the document.
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> In his evidence, they state moreover, '[A.C., (the "Realtor")] is not our agent authorized to act on our behalf, and therefore cannot make the allegations on the claims'.

> We were very rushed by [the Realtor]; he said there was some urgency to get the tenancy agreement signed, and he would not leave it with us to go over. And my wife noted that both parking and laundry were left off in section 3 of the tenancy agreement, and she asked him to tick those boxes, and he said he had to take it to the Landlords in order to get their assent to that.
>
> When we eventually received a copy of the signed tenancy agreement, it had not been checked, and [E.L.] has since several times blamed me for leaving it off; however, on the basis that the Landlord maintained that the document is a forgery by myself, and there is no RTB 24 [Notice Terminating or Restricting a Service or Facility] for them to take a share of the garage, because they're not legally occupying it right now. They claim the contract to share the garage is a forgery – it certainly isn't by us. The accusation of forgery is very serious, because it's under the *Criminal Code* – punishable by up to 10 years in prison. It may be a crime to falsely accuse someone in a judicial hearing.

The Landlord said:

> Regarding the garage, it was something that we and our agent discussed before purchasing the place. We originally wanted the entire garage, but he convinced us to clear half of that and to share it. However, the laundry was never included in the tenancy agreement, because we didn't want the maintenance, noise….
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> Regarding the timeline: the tenancy agreement that we signed was done prior to our purchase. We wanted a new tenancy agreement with whichever tenant was staying. The other tenant would be bought out by the previous owner.
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> The buyer can make a request for vacant notice. This is the agreement we were going to act upon, before taking possession of the property. There was a tenanted property top and bottom. We hadn't decided which unit we wanted to move into at that point.
>
> The tenancy agreement, yes, we drafted for the [Tenants], and at the same time pretty much we decided that if we couldn't come to an agreement, we would take the house empty. There were parts we wanted to use for ourselves.

I asked the Landlords what they believed was the ultimate agreement between the Parties. They said:

> We share half of the garage, but laundry was never included, and they were not allowed to park in the garage, due to limited space.

The Tenants said:

> We have been using the laundry in our half of the garage, which we had done for the previous 14 years. I would like to point out that they had not decided which suite to occupy, and that was part of what we considered coercion for us to share the garage. We were told that our tenancy depended on us signing that agreement to share the garage. As the policy guidelines say, there ought to be compensation when a facility is restricted or terminated. It's in the contract that if the buyers offer us the continued tenancy, we would share the garage with them.

The Tenants also submitted a copy of what they call "the contract to share the garage". This document was at page 22 of the Tenant's submissions, and page 28 of the Landlord's submissions. This document states:

> Memorandum of Understanding
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> Should they Buyer of [residential property address] complete the contract of purchase & sale dated June 10, 2020, the Buyers do hereby assure [the Tenants], the current tenants of the upper floor that they will have a 1 year lease @ the monthly rent of $2,135.00, along with Regulation of RTB of B.C. and the tenants agree that the new owners, when they occupy the lower unit, will be able to use ½ of the garage & the open parking area. .
>
> ("MOU")

The MOU was signed by the new Landlords and the Tenants, although it is not dated. Further, the Tenants said the Landlords have accused them of forging this document. In the hearing, the Landlords said:

> The details should have said that we would share the garage. [The Realtor] said we should decline. We never received a copy of the addendum. But forged? We believe that parts of it may it be forged.

When I asked the Landlord which parts he thought might be forged, he said:

> [S.Q.] and I don't recall specific details about how much rent, we only remembered saying that we would use half of the garage. This was supposed to

> be a MOU that we would share half of the garage, which didn't have much to do with the tenancy agreement we signed later.
>
> We wouldn't have had the rent on it, we wouldn't have had the open parking area on it. It's just about sharing half of the garage.

The Landlords said that the Realtor was never given the authority to represent them However, the Realtor transferred the new tenancy agreement back and forth between the Parties. Further, the Landlords' signatures are on the bottom of the MOU, as are the Tenants'. The Landlords did not accuse the Tenants of forging the Landlords' signatures. It is not clear who drafted the MOU, but both Parties executed this agreement.

I asked the Landlord what the dispute is about, and he said: "Nothing much. We needed more space, so we took back the garage in exchange for a rent reduction." I asked if the Landlord had the Tenants' agreement to this, and he said: "They are arguing it is an essential service, which is why they filed this hearing."

The Tenants said:

> Going back to the MOU, [the Landlord] said he's never seen it, but it has their signatures, and if [the Realtor] had showed them this and they signed it, aren't they supposed to ask for a copy of it?
>
> He asked first of all - we don't know if we have an original. What we have is what [the Realtor] gave us on the 20th. So [the Landlord] asked to see the original, and we included it in our submissions, so he has seen what we've got, and our legal advice was to not engage with him, because of previous difficulties we've had with him. We took that advice and did not withhold it. It is highly irresponsible to charge someone on such weak evidence - to accuse someone of a major felony, where there's a lot at stake for us.
>
> While we're on this part, refer to page 10 of my submissions for the tenancy agreement. Under section 3, it sets out what's included in the rent. And 3b says:
>
> > The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

'Essential to the tenants' use of the rental unit'. That's a big part of the basis of our contesting them taking the second half of the garage. Especially in our condition. I have been designated a disabled person. Having to go somewhere else to do the laundry is difficult, as we do not have a vehicle. I have two serious co-morbidities.

#2 PROVIDE SERVICES OR FACILITIES REQUIRED BY THE TENANCY AGREEMENT OR LAW

I asked the Tenants to explain this claim to me, and they said:

Laundry facilities. These are in the garage, which is what we've been discussing. And when we did the walk-through, [the Landlord] marked that the washer and dryer had a dent. If he knew we were not supposed to use it, why note it's condition in the walk-through?

There are a number of inconsistencies in what's been transpiring with this. [The Landlord] says that he deliberately did not tick the parking or the laundry, but we don't own a car, but we regularly rent cars. He gave us a garage door opener, which you only use for a car. We were allowed to park there for a while.

As far as the laundry is concerned, he has a spy camera in the garage, which we find an invasion of privacy. Since they first installed the camera, and they never said anything until around May when he claimed it had just come to his attention that we were using the laundry.

We have been using it since we first moved in. We consciously were willing to pay more to have this unit – two bathrooms, on-site laundry, and a large kitchen. He is attempting to take away something that is fundamental to our living here. If you decide we can't do our laundry here, any more we'll have to move.

The Landlord said:

We had this agreement and they were able to see it, and they agreed to the terms in it, and we emailed them back with a copy. I asked if everything was okay, and they said it looked good. The laundry was not even checked off.

We had no intention to take over the previous lease they had in place, which they had in place with [the former owner]. We didn't want to deal with certain things.

> We're not taking away the garage, because of the laundry, but we need the garage for the space.
>
> Laundry was never included before we moved in. Before we purchased the place, we came to a new agreement that the services would not be provided. Now they are saying they were tricked into signing.

The Tenants said:

> That was the reason why we had the MOU. It was because we wanted to make sure we can use the washer and dryer, if it wasn't checked off when [the Realtor] brought the contract. He said he has to bring it, and in the meantime, we had the MOU. We were aware that [the Realtor] was going to take it to [the Landlord], because it was in our previous agreement.

The Landlord said:

> They marked up the entire tenancy agreement when [the Realtor] brought it back to us. They didn't tick off laundry to initial it. At the bottom of the tenancy agreement – a new landlord must follow all terms of agreement, unless the Tenant and new Landlord agree to other terms. We agreed to the new terms, signed the agreement, double checked it. Did not change it. They marked up a bunch of things, but not the laundry component. They added an addendum, marked in #1 …. Laundry was not addressed.

The Tenants said:

> Yes, we didn't mark anything on that page – section 3 - because [the Realtor] wouldn't let us. And he said he had to take it back to the new landlord. You have to understand, at this time, we weren't suspicious that anything untoward was happening, We weren't happy about sharing the garage. We trusted [the Realtor] that he would take it to the new Landlord.
>
> When we got the email of the new agreement, and if anything was left out, it was inadvertent. But I'd also like to point out that we were in considerable uncertainty – they hadn't decided which suite to evict. It was a time of intense Covid activity. We were terrified of the prospect of moving out, so there's considerable pressure to leave a secure situation of month-to-month tenancy, and to sign a new agreement. I think that the quote I gave earlier, 'the Landlord must not terminate

> or restrict…', applies to him with the new agreement.

The Landlord said:

> Prior to our taking over possession, it was not made known whether we wanted to keep them there. There was no pressure for them to sign a new tenancy agreement with us. We wanted them to review it; it was . . . but he did sign a new agreement with us, and that he was signing under duress - that didn't happen.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find that the Tenants' two claims are, essentially, for the same thing – the desire to maintain access to the laundry facilities in the garage. I find that the Parties have agreed that each can use half of the garage; however, what is undetermined is whether the Tenants may use the laundry facilities at the residential property.

The Landlords have questioned the validity of the MOU, because they were not given a copy of it, and because they think the handwriting is that of the Tenant, P.C.; however, the Landlords did not deny having signed it.

Further, regarding the suggestion that the Tenants may have forged the MOU, the Landlord did not direct me to any evidence that he has expertise in analyzing handwriting to be able to determine that it was forged. Also, when I specifically asked him what the agreement was between the Parties, the Landlord said: "We share half of the garage, but laundry was never included, and they were not allowed to park in the garage, due to limited space." As such, I find that the Parties agreed to share the use of the garage, which is set out in the MOU.

I find that the Tenants were in a stressful situation when they were asked to sign a new tenancy agreement with a new Landlord, who was admittedly intent on removing one of the services/facilities that the Tenants had used for the prior 14 years living there. The Landlords were clear that they had drafted the new tenancy agreement prior to completing the sale of the property. They said they intended to live in one of the two rental units in the residential property, although, they had not decided which it would be.

Further, the Landlords also stated, “If we couldn’t come to an agreement, we would take the house empty.”

I find from their testimony that the Tenants knew about the precarious position of their tenancy, given the new Landlords’ indeterminate intentions regarding the two tenancies – or any tenancy continuing. I find that this amounts to pressure on the Tenants to agree to the Landlords’ new terms, which effectively eliminates the laundry service. Policy Guideline #8 “Unconscionable and Material Terms” includes the following:

> **Unconscionable Terms**
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> Under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.
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> Terms that are unconscionable are not enforceable. Whether a term is unconscionable depends upon a variety of factors.
>
> A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage. Exploiting the age, infirmity or mental weakness of a party may be important factors. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.
>
> The burden of proving a term is unconscionable is upon the party alleging unconscionability.
>
> [emphasis added]

I find in this set of circumstances that the Tenants had a tenancy agreement with the former owner, which included their use of the laundry facilities in the garage. I find that the new Landlord withdrew this service from the new tenancy agreement without first advising or discussing it with the Tenants’. I note that the MOU does not contain any reference to use of the laundry facilities, despite this being the Tenants’ primary use of the garage.

As the Tenant, P.C., said, he is disabled, and having to go somewhere else to do the laundry would be difficult, as they do not own a vehicle. The Tenants would have to rent a vehicle every time they wanted to do their laundry.

I find that the Landlords' action in eliminating the Tenants' access to the laundry facilities in the garage is unconscionable, given the Tenants' age, infirmities, and the Landlords' failure to advise the Tenants of this change, other than by leaving laundry off the new tenancy agreement.

Section 27 of the Act sets out a landlord's obligations regarding the termination and restriction of services or facilities. It requires that a landlord must not terminate or restrict a service or facility, if it is essential to the tenant's use of the rental unit as living accommodation. Section 27 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.

Policy Guideline #22, "Termination or Restriction of a Service or Facility", states the following about "essential" services or facilities:

> **B. ESSENTIAL OR PROVIDED AS A MATERIAL TERM**
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> **An "essential" service or facility** is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation or use of the manufactured home site as a site for a manufactured home, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

. . .

> In determining whether a service or facility is essential, or whether provision of that service or facility is a material term of a tenancy agreement, an arbitrator will also consider whether the tenant can obtain a reasonable substitute for that service or facility. For example, if the landlord has been providing basic cablevision as part of a tenancy agreement, it may not be considered essential, and the landlord may not have breached a material term of the agreement, if the tenant can obtain a comparable service.

The Tenants' said: "He is attempting to take away something that is fundamental to our living here. If you decide we can't do our laundry here any more, we'll have to move." I find this statement sums up the importance of this facility to the Tenants.

I find that the Landlords failed to comply with section 27 (1) (a) of the Act and PGs #8 and 22 in removing this important facility in the Tenants' tenancy. I find that the Landlords did not turn their minds to the importance of the laundry facilities to the Tenants. I find that removing the Tenants' access to laundry at the residential property is unconscionable, as I find that laundry here is essential to the Tenants' tenancy, and I find that the Landlords may not eliminate it.

I **Order** the Landlord to include the laundry facilities in this tenancy, pursuant to sections 27 and 62 of the Act.

Given the Tenants' success in their Application, I also award them with recovery of their $100.00 Application filing fee, pursuant to section 72 of the act. The Tenants are authorized to deduct $100.00 from one upcoming rent payment, in complete satisfaction of this award.

Conclusion

The Tenants are successful in the Application for an Order for the Landlord to Comply with the Act or tenancy agreement, as they provided sufficient evidence that the laundry facilities are an essential service to their tenancy. The Tenants other claims are dismissed with leave to reapply.

The Tenants are also awarded recovery of their **$100.00** Application filing fee. They are authorized to deduct $100.00 from one upcoming rent payment in complete satisfaction of this award.

The Landlords are Ordered to reinstate laundry to the Tenants' tenancy agreement.

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: February 04, 2022

Residential Tenancy Branch