



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, RR, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's brother attended the hearing as the landlord's interpreter and affirmed to translate from the English language to the Cantonese language and from the Cantonese language into the English language to the best of his ability.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

The tenants testified that they served the landlord with a copy of this application for dispute resolution and evidence by slipping it through the landlord's mail slot on or around January 12, 2022. The landlord testified that she received the tenants' application for dispute resolution on January 12, 2022 but thought that the Residential Tenancy Branch sent it to her, not the tenants. I note that the Residential Tenancy

Branch does not serve applications for dispute resolution. I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenants' application for dispute resolution because the landlord confirmed receipt.

Both parties agree that the tenants did not serve the landlord with a copy of the signed tenancy agreement. The landlord testified that the tenants kept the only copy when it was signed, and that the landlord never received a copy. The tenants testified that they sent the landlord a copy; however, proof of service documents were not entered into evidence.

Section 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the "Rules") states that evidence not submitted at the time of Application for Dispute Resolution that are intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that since the tenants did not serve a copy of the tenancy agreement on the landlord, the tenancy agree is excluded from consideration.

Issues to be Decided

1. Are the tenants entitled to an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65 of the *Act*?
2. Are the tenants entitled to an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants and landlord's claims and my findings are set out below.

Both parties agree to the following facts. The subject rental house has three suites, one top suite, and two basement suites. The subject rental property is one of the basement suites. All suites have their own kitchen and bathroom. At the start of this tenancy, the landlord lived in one of the basement suites, next to the subject rental property. The landlord is an elderly woman and tenant T.V. was a close friend of the landlord's late

daughter. In October of 2021 the landlord's brother moved into the top suite of the subject rental house.

Both parties agree that the tenants moved in, in May of 2021 and that from the start of this tenancy until the landlord's brother moved in, the tenants were permitted to use the laundry, cable and internet provided by the landlord. A tenancy agreement was not signed at the start of this tenancy. Both parties agree that rent is currently \$750.00 per month.

Both parties agree that when the landlord's brother moved in, the tenants requested that a written tenancy agreement be signed. Both parties agree that a written tenancy agreement was signed in October of 2021; however, they disagree on what was included in rent, in that tenancy agreement.

The landlord testified that while the tenants were permitted to use the landlord's laundry, cable and internet at the start of this tenancy, this was just a courtesy, and the tenants were not entitled to those services.

Both parties agree that when the landlord's brother moved in, in October of 2021, the landlord's brother informed the tenants that due to COVID 19 it was no longer safe to share laundry. Both parties agree that in October of 2021 the tenants were locked out of the laundry room.

The tenants testified that they now have to take their laundry out for cleaning and that they usually do one load per week, but sometimes they do two loads per week. The tenants testified that it costs them approximately \$3.50 per load including detergent and that including the cost of transportation to the laundry machines, the cost per load is approximately \$6.00. The tenants testified that they spend between \$50.00 to \$75.00 per month on laundry. No receipts for the laundromat were entered into evidence. No calculation on transit costs or receipts were entered into evidence.

The landlord testified that laundry was never an included term in the tenancy agreement and that it was only provided as a courtesy. The tenants testified that it was a term of both the oral and written tenancy agreements.

Both parties agree that the landlord cut off the tenants access to cable and internet in October of 2021. The tenants testified that they have incurred an additional monthly charge of \$155.68 for cable and internet since the landlord cut them off. The tenants

entered into evidence a cable/internet bill totalling \$139.00 plus tax. The tax is not calculated on the bill. 12% tax on \$139.00 equals a total of \$155.68.

The landlord testified that cable/internet were never an included term in the tenancy agreement and that it was only provided as a courtesy. The tenants testified that it was a term of both the oral and written tenancy agreements.

Both parties agree that at the start of the tenancy the landlord allowed the tenants to use the garage for storage. Both parties agree that in October of 2021 the landlord requested the tenants to remove their possessions from the garage so that the landlord's brother could use it for parking. Both parties agree that the tenants' possessions remain in the subject garage.

The landlord testified that the storage was never an included term in the tenancy agreement and that it was only provided as a courtesy. The tenants testified that it was a term of both the oral and written tenancy agreements. The landlord testified that she allowed the tenants to use the garage when the tenancy started because she did not drive; however, since her brother moved in circumstances have changed and he drives her to her medical appointments.

Analysis

All tenancy agreements between a landlord and a tenant with respect to a rental unit and residential property are subject to the *Act*, unless specifically exempted. The definition of "tenancy agreement" in section 1 of the *Act* includes tenancy agreements entered into orally, in writing, and by way of implied or express terms. Therefore, in this case, the parties are bound by the terms of their oral agreement and written agreement, including any implied or express terms.

I was provided opposing testimony that the parties had expressly discussed and agreed that cable, internet, laundry and storage were included in the rent. However, it is undisputed that the landlord provided the tenant with cable, internet, storage and laundry from the start of this tenancy until her brother moved in. Given the provision of these services at the start of this tenancy, I find that on a balance of probabilities, there was at least an implied term of tenancy that cable, internet, laundry and garage storage were included in the rent. Therefore, I find that cable, internet, laundry and garage storage were services included in the rent.

Section 27 of the *Act* states:

- (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.

Pursuant to section 65(1)(f) of the *Act*, if the director finds that a landlord has not complied with the *Act*, the regulations or the tenancy agreement, the director may issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that cable, internet and laundry are not essential services. I find that the landlord breached section 27(2)(a) of the *Act* by not providing the tenant with 30 days' written notice, in the approved form, of the termination. I find that the landlord breached section 27(2)(b) of the *Act* by not reducing the rent in an amount that is equivalent to the

reduction in the value of the tenancy agreement resulting from the termination. I find that the tenants suffered a loss in the value of the tenancy.

I find that the tenants have proved the loss suffered from the internet and cable being disconnected, in the amount of \$155.68 per month. I find that the value of the tenancy was reduced due to the cable/internet disconnection, by \$155.68 per month. Pursuant to section 65(1) of the *Act*, I find that the tenants are entitled to recover \$155.68 per month from October 2021 to March 2022 in the amount of \$934.08. I find that for each month going forward that the landlord does not supply cable and internet, the tenants are entitled to a rent reduction of \$155.68 per month.

I find that the tenants have not proved the value of the loss they suffered from the landlord's restriction of laundry facilities. The tenants did not provide any receipts to substantiate the costs claimed and, even if the tenants did two loads of laundry per week at the amount claimed of \$6.00 per load, the total monthly cost would be \$36.00, not \$50.00 to \$75.00 (8 loads per month * \$6.00 per load = \$36.00). I also note that the tenants testified that in most weeks, only one load of laundry is completed, not two.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the tenants have proved that laundry was included in the rent and that they suffered a loss when the landlord restricted that service. I find that the tenants are entitled to nominal damages for loss of laundry facilities, in the amount of \$25.00 per month from October to March 2022 totalling \$150.00. I find that for each month going forward that the landlord does not supply laundry facilities, the tenants are entitled to a rent reduction of \$25.00 per month.

I find that since the garage storage has not been altered, the tenants are not entitled to a reduction in rent for the possibility that the landlord may restrict the service. Any future restriction of service by the landlord must be done in accordance with section 27 of the *Act*.

On the tenants' application for dispute resolution, the tenants claim a rent reduction of \$2,000.00; however, it is not clear how this sum was arrived at. The tenants did not enter into evidence a monetary claim worksheet to set out their calculations. When asked in the hearing how the sum of \$2,000.00 was arrived at, the tenants testified that

it was for the cost of cable, internet, laundry and counseling fees; however, specific amount for each claim were not provided.

The tenants' application for dispute resolution does not mention counseling fees and no receipts for counseling were entered into evidence. I informed the tenants in the hearing that I would not consider their claims for counseling as it was not an issue defined in the application for dispute resolution and it was not reasonable to expect the landlord to anticipate such an addition to the claim. No calculations equalling \$2,000.00 were provided. The tenants' application for dispute resolution only mentioned the cable, internet, laundry and storage issues.

As the tenants were successful in this application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$1,184.08 from rent due to the landlord.

Conclusion

The tenants are entitled to deduct \$1,184.08 from rent pursuant to the below table:

Item	Amount
Cable/internet	\$934.08
Nominal damages for laundry	\$150.00
Filing Fee	\$100.00
TOTAL	\$1,184.08

The tenants are entitled to a rent reduction of \$155.68 per month, from April 2022 forward, until the landlord provides cable and internet.

The tenants are entitled to an additional rent reduction of \$25.00 per month from April 2022 forward, until the landlord provides laundry facilities.

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 14, 2022

Residential Tenancy Branch