



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, RP, PSF, FFT

Introduction

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

- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant 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 of the *Act*.

RH ("landlord") represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

As the parties were in attendance I confirmed that there were no issues with service of the tenants' application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenants' application and evidence. The tenants testified that they were not served with the landlord's evidentiary materials. The tenants, however, consented to admitting the landlord's evidence after reviewing the materials at the beginning of the hearing as summarized and read out by myself. After reviewing the materials with the tenants during the hearing, the tenants consented to the admittance of these materials and continuing with the scheduled hearing.

Issues

Are the tenants entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

Are the tenants entitled to an order requiring the landlord to make repairs to the rental unit?

Are the tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This 1 year fixed-term tenancy began on September, 1, 2021, with monthly rent currently set at \$3,200.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$1,600.00 which the landlord still holds.

The tenants confirmed in the hearing that since this application was filed on December 12, 2021, the requested repairs have been completed, with the exception of the transition strips.

The tenants are requesting a rent reduction related to the loss of use of a washing machine that broke down on October 22, 2021. The tenants provided detailed communication with the landlord's agent to support that the issue was reported immediately. The tenants testified that the issue with the washing machine was not resolved until January 14, 2022, after this application was filed. The tenants testified that they suffered significant hardship as they were without a functioning washer for a significant amount of time, and had to rely on alternative solutions such as seeking out assistance from friends until the issue was resolved. The tenants note that the monthly rent includes the use of a washer and dryer, and are requesting a corresponding rent reduction of \$250.00 per week with a grace period of one week. At the time the application was filed, the tenants were without a functioning washing machine for seven

weeks. The tenants requested an ongoing rent reduction until the repair was completed on January 14, 2022, which is equivalent to five additional weeks.

The tenants submit that the amount requested is justified considering that the landlord failed to respond in a timely manner, causing the tenants to seek out alternative solutions. The tenants note that many of the issues were resolved only after they had filed an application for dispute resolution, and despite following up with the landlord's agent, the tenants still did not have access to a functioning washing machine for twelve weeks. The tenants testified that they could not use the traditional laundromat services as they had caught covid during this period. The tenants provided the fees and opening hours for several laundromats to support their calculation of a rent reduction.

Residential Tenancy Policy Guideline #5 addresses a party's duty to minimize loss and states the following:

"Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation². Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed."

I am satisfied that the tenants had made an effort to mitigate the landlord's exposure to monetary losses as is required by section 7(2) of the *Act*. I find that it is difficult to measure an exact amount of monetary loss for laundry, especially when different prices correspond to different services. Furthermore, the tenants were subjected to limitations such as illness and dealing with peak hours. The tenants submit that they averaged ten loads per week, and relied on the help of friends and family. Due to illness, the tenants had to contemplate using the more expensive option of valet service to reduce the spread of covid-19.

I find the steps taken by the landlord to be reasonable, and meet the requirements of section 7(2) of the *Act*. Although not equivalent to doing laundry at home, I find the tenants had little choice but to seek out nearby laundry services, or rely on friends and family. I find the tenants provided detailed evidence to support that they had attempted to follow up with the landlord in an effort to obtain a replacement or repair, but this facility was not restored for a significant amount of time. Although perhaps not particularly hundred percent the fault of the landlord, I find that the tenants had rented a unit with a washer and dryer as this was an essential facility that the tenants relied on on a regular basis. I find that the tenants had sufficiently supported that a loss of this facility for over a week to be extremely

Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$12,266.97 in satisfaction of the monetary loss suffered by the landlord due to the tenant's actions.

The tenants testified that some repairs still remain outstanding such as the broken transition piece. The tenants testified that the issue was more than a cosmetic repair as the area poses as a tripping and stubbing hazard.

The landlord's agent disputes the tenants' claims stating that the tenants failed to support how \$250.00 per week is justified. The landlord's agent testified that the delay was due to supply chain issues. The landlord testified that they did their best to deal with the issue including sending a repair person, and purchasing a washer and dryer, which ended up being backordered. The landlord submitted receipts to support that they had in fact purchased a new machine.

The landlord disputes the tenants' request to repair the transition strip as the landlord deems this repair to be cosmetic, and not within the landlord's obligation to repair.

Analysis

In this matter the applicant tenant bears the burden to prove that it is likely, on balance of probabilities, that the listed appliance referenced in the tenants' application was to be provided as part of the payable rent from which its value is to be reduced. I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

Section 27 Terminating or restricting services or facilities, states as follows,

- 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.

I find that for the purposes of this matter pursuant to Section 27(2)(b) and 65 that appliances are a qualifying **service or facility** stipulated in the **Definitions** of the *Act*.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

In this case, although I find that the landlord provided explanations for the delay in repairing the washing machine, it is undisputed that the tenants were without a functioning washing machine from October 22, 2021 to January 14, 2022. In considering whether the tenants are entitled to the monetary order for a reduction in rent, I must determine whether there has been a reduction in the value of the tenancy agreement. I find it is clear on the written tenancy agreement that the tenants were to be provided with a functioning washing machine. As such I find that the tenants were without a functioning washing machine for twelve weeks despite the fact that the rent included use of this facility.

I find the *Act* clearly states that on termination of a service or facility the appropriate remedial rent reduction amount should be "equivalent" to *the reduction in the value of the tenancy agreement*. I find that the requisite calculation prescribed in 27(2)(b) is one

predicated on the question of, “what is the reduction in the *value* of the tenancy agreement resulting from the absence of the appliance”? Or, “by what amount is the *value* of the tenancy agreement (rent) reduced in absence of appliance”?

I have considered the *Act* definitions of, “rent”, “service or facility”, and “tenancy agreement”, all of which I find comprises the totality of the tenancy agreement. I find that the tenants had no choice but to seek alternatives as they were without a functioning washing machine for twelve weeks. I find that the use of the washing machine was an included facility. I find compensation for the loss of use of this facility is justified, even if the landlord had intentions to repair or replace the washing machine earlier.

On preponderance of the evidence and the totality of factors comprising a *tenancy agreement* I find that a rent reduction of the proposed \$250.00 per week to be reasonable considering the equivalent laundry services per load for 10 loads per week. Although the tenants were fortunate to have had the assistance of friends and family, I find the tenants had sufficiently supported the equivalent value if they did not have this help. Accordingly, I allow the tenants their request for a retroactive rent reduction of \$250.00 per week for twelve weeks less a one week grace period for a total monetary order of \$2,750.00.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I have considered the tenants’ request for an order requiring the landlord to repair the broken transition strip. Although the landlord’s response is that this damage is cosmetic in nature, and does not fall within the landlord’s obligations to repair, I find that the tenants had provided sufficient evidence to support that the area poses a potential hazard as clothing items may get caught on the uneven surface. I order that the landlord repair this item by May 31, 2022, or alternatively reimburse the tenants for repairing this

area themselves. If the landlord fails to resolve this matter by May 31, 2022, I order that the tenants may reduce their rent by \$100 per month until this issue is addressed.

As the tenants were successful in their application, I allow the tenants to recover the filing fee.

Conclusion

The tenants are provided with a Monetary Order in the amount of \$2,850.00, and the landlord must be served with this Order as soon as possible.

Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I also order that the landlord repair the broken transition strip on or before May 31, 2022, or allow the tenants to perform this repair themselves, which the tenants may be reimbursed for. If the landlord fails to comply with this order by May 31, 2022, I allow the tenants to reduce their rent by \$100.00 per month until this issue is resolved.

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 28, 2022

Residential Tenancy Branch