



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNC, MNDCT, RR, PSF, AAT, OT

Introduction

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

- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 30;
- the cancellation of two One Month Notice to End Tenancy for Cause pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided in the amount of \$4,880, pursuant to section 65;
- an order that the landlord provide services or facilities required by law pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$480 pursuant to section 67; 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 tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Tenancy Has Ended

At the outset of the hearing, the tenant advised me that he no longer resides at the rental unit. He testified that he began removing his belongings from the rental unit on February 1, 2022 and that the landlord removed the remaining belongings on February 5, 2022 and put them on the rental unit's patio in the rain. The landlord confirmed that this was "more or less" what happened.

I advised the parties that I could not address any claim for compensation the tenant might have had which arose from damage caused to the tenant's property as a result of the landlord moving items into the rain. The tenant acknowledged that he understood. He stated that the only remaining parts of his application which required adjudication were the applications for a retroactive rent reduction, a monetary order, and the filing fee.

As such, I dismiss the balance of the tenant's application, without leave to reapply.

Issues to be Decided

Is the tenant entitled to:

- 1) a monetary order of \$480
- 2) a retroactive reduction of rent of \$4,480; and
- 3) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into an oral tenancy agreement starting July 1, 2017. Monthly rent was \$1,500 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$750. The landlord used this deposit to pay for the tenant's former roommate's portion of the rent, against the tenant's will.

The tenant testified that the tenancy agreement included access to a laundry room which was shared with the landlord (who lives in a different unit in the residential property) and for garbage removal.

The landlord testified that the tenancy agreement does not include use of the laundry room, but that he allowed the tenant to use it as a favour. He testified that he required the tenant to adhere to the scheduled days when it could be used and required that it not be used after 9:00 pm, but that as time wore on, the tenant abused this favour and used it every day of the week, at all hours of the day. Consequently, the landlord testified that he stopped allowing the tenant to use it. He testified the tenant used the laundry facilities for the first 33 months of the tenancy. He testified that in September 2017 (shortly after the tenancy started), he paid for the installation of a clothes drying line for the tenant's use, which he says supports his position that use of the laundry facilities was not included in the monthly rent.

The tenant argued that his use of the laundry facilities for the first 33 months of the tenancy is proof that the laundry facilities were included in the monthly rent. He stated that after the landlord prohibited him from using the laundry facilities, he had to use a laundromat. He estimated that this cost him about \$80 a month. He seeks

compensation of \$1,920 representing loss of use of the laundry facilities for 24 months multiplied by \$80 per month.

The tenant testified that the landlord never gave him access to the municipal garbage cans to dispose of his household waste. As such, he testified, he had to make trips to the local dump roughly twice per month. He estimated that he incurred costs of \$20 per trip (or \$40 per month). He seeks compensation in the amount of \$1,920 representing cost to bring household waste to the dump for 48 months multiplied by \$40 per month.

The landlord denied that he had prohibited the tenant from using the municipal garbage cans. He submitted photographs of these garbage cans located on the residential property. He testified that the tenant did not use these cans, but he was unsure why that was.

The tenant also seeks compensation for loss of income resulting from the landlord blocking the exit from the residential property, which prevented the tenant from driving his vehicle to work for two days. The tenant testified that in the fall of 2021 there was significant flooding on the residential property (as there was throughout British Columbia), and that the landlord tried to drive through a large puddle near the exit to the property. He testified that the landlord's vehicle was stuck in the puddle and blocked the exit.

The tenant asked the landlord to move the vehicle for two days, but the landlord refused. The tenant testified that on the third day he and his roommate pushed the vehicle onto the road, clearing the exit, so they could drive their vehicle out. He testified that as a result of the landlord blocking the exit, he missed 16 hours of work for which he earns \$23 per hour. He testified that his roommate missed a similar amount of work at a similar rate.

The landlord did not dispute that his car blocked the exit of the residential property. However, he argued that this did not prevent the tenant from going to work. He stated that the floods themselves would have prevented the tenant from leaving the property, and it was only because the water had receded on the third day that the tenant was able to move his vehicle. He testified that the tenant could have left the residential property on foot, and found other means of transport to work. He also expressed great displeasure that the tenant took it upon himself to move the landlord's vehicle without his permission.

On the application, the tenant applied for a rent reduction of \$4,480 as well as a monetary order for \$480. However, based on the submissions made at the hearing, I understand the tenant's monetary claim to be as follows:

Description	Calculation	Amount
Retroactive rent reduction (laundry)	24 months x \$80/month	\$1,920.00
Retroactive rent reduction (garbage)	48 months x \$40/month	\$1,920.00
Loss of wages	16 hours x \$23/hour	\$368.00
Total		\$4,208.00

I note that, as the tenant's roommate was not a party to this application, or the tenancy agreement, I cannot make any monetary order for their loss of wages.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the tenant must prove it is more likely than not that the landlord breached the act or tenancy agreement by denying him use of the garbage cans and laundry facilities and by preventing him from exiting the residential property, that the tenant suffered a quantifiable loss as a result of this breach, and that the tenant acted reasonably to minimize this loss.

1. Loss of Income

Section 30 of the Act states:

Tenant's right of access protected

30(1) A landlord must not unreasonably restrict access to residential property by

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

I accept that the presence of the landlord's vehicle at the exit of the property restricted the tenant's ability to enter and exit the residential property with his own vehicle. However, I am not satisfied that this amounted to an *unreasonable* restriction. The restriction was not intentional and was the result of the landlord's vehicle getting stuck in a large puddle caused by extreme flooding in the area. The tenant did not establish that, had the landlord's vehicle not blocked the exit, that his vehicle would have fared any better. I do not find it unreasonable for the landlord to have attempted to cross the puddle in his vehicle, as I gather that a tenant would have attempted a similar feat had the landlord's vehicle not been there.

There is no evidence before me to suggest that the landlord's vehicle could have been moved the day after it became stuck in the puddle. As such, I do not find that the blockage on the second day was unreasonable either.

Accordingly, I do not find that the landlord breached the Act by blocking the exit to the property on either of the two days the tenant missed work. As such, I dismiss this portion of the tenant's application, without leave to reapply.

2. Retroactive Reduction of Rent

Based on the testimony of the landlord and the tenant's application for compensation for his inability to use the garbage bins, I find that use of the garbage bins were included in monthly rent.

Both parties agree that the tenant had use of the laundry facilities for the first 33 months of the tenancy agreement. The landlord characterized this as a "favour" that he extended to the tenant. However, in the absence of a written tenancy agreement, I cannot say with any degree of certainty what the exact terms of the tenancy were at its inception. However, I can infer what those terms were by looking at the subsequent conduct of the parties.

Given that the tenant had use of the laundry facilities for almost three years before having them removed, I find it more likely than not the use of such facilities was a term of the tenancy agreement and was contemplated by both parties when the tenancy agreement was entered into.

I do not think it likely that, after having entered into an agreement where the parties understood that use of the laundry facilities was not included, the landlord would then, in any event, permit the tenant to use the laundry facilities on a regular basis for 33 months. Such a scenario is not in accordance with the preponderance of probabilities.

As such, I find that use of the laundry facilities was included in the tenancy agreement.

Section 27 of the Act 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.

I do not find that use of garbage or laundry facilities are essential or material. As such, the landlord is permitted to terminate their use, but must compensate the tenant accordingly.

As stated above, the tenant bears the onus to prove his allegations are true on a balance of probabilities. The tenant provided no documentary evidence to support his claim that the landlord prevented him from using the garbage cans located on the residential property. If this were the case I would have expected text messages, emails, or some other form of written communication to have been produced at some point during the tenancy which would have referenced such a denial. As such, I find that the tenant has failed to establish it is more likely than not that the landlord denied him the use of the garbage cans. Based on the landlord's testimony, I accept that the tenant did not use the garbage cans, however I cannot say why this was. I dismiss this portion of the tenant's application, without leave to reapply.

The parties did not dispute the fact that the landlord prevented the tenant from using the laundry facilities. I have already found that the provision of such facilities was the term of the tenancy agreement. As such, I find that the landlord has breached section 27 of the Act by terminating the use of these facilities and by failing to reduce the tenant's rent by a commensurate amount.

The tenant did not submit any documentary evidence supporting his testimony that he incurred approximately \$80 a month in cost associated with doing laundry at a laundromat. However, \$80 represents roughly 5% of the tenant's monthly rent. I find that the denial of use of the laundry facilities by the landlord resulted in a reduction of value of the tenancy agreement of roughly 5% as well.

As such, I order that the tenants rent is retroactively reduced by 5% a month for 24 months and I issue the tenant a monetary order for \$1,920 representing the total value of this rent reduction.

As the landlord has been partially successful in this application, I decline to order that he reimbursed the tenant of the cost of the filing fee.

Conclusion

Pursuant to section 65 of the Act, I order that the landlord pay the tenant \$1,920.

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 6, 2022

Residential Tenancy Branch