



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, DRI-ARI-C, RP, LRE, LAT, OLC, FFT

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

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 by the attending parties. Both parties confirmed that they understood.

At the outset of the hearing, the landlord confirmed that their last name was misspelled. As neither party was opposed, the landlord's last name was amended to reflect the proper spelling.

Both parties also confirmed that the unit number was missing from the application. As neither party was opposed, the application was amended to include the unit number of the rental unit.

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application') and amendment. In accordance with sections 88 and 89 of the *Act*, I find the the landlord duly served with the tenant's application and amendment. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Preliminary Issue: Dishwasher Repair

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the landlord agreed to the following:

1. The landlord agreed to repair the dishwasher on or before June 4, 2022. If the dishwasher cannot be repaired, the landlord agreed to replace the dishwasher with a model of equal value and function or before July 4, 2022.
2. The tenant agreed to provide access for the repair or replacement of the dishwasher if proper notice is given by the landlord to enter the rental unit, with or without the tenant present.

The hearing proceeded to deal with the remaining issues below.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

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

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlord?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Should the tenant be given authorization to change the locks to the rental unit?

Is the tenant entitled an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the cost of the filing fee from the landlord for this application?

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 fixed-term tenancy began on November 27, 2020. The rent was originally set at \$2,100.00, payable on the first of the month. The parties signed a new fixed-term agreement for the period of November 30, 2021 to November 30, 2022 with monthly rent now set at \$2,270.00, payable on the first of the month. The landlord still holds the security deposit of \$1,050.00.

The tenant filed this application in relation to the following issues:

- 1) The tenant is requesting that they be provided a reimbursement of the additional rent paid since December 2021. The tenant testified that the rent was originally set at \$2,100.00, but the landlord had forced the tenant to sign a new agreement effective November 30, 2021 with monthly rent now set at \$2,270.00 per month. The tenant argued that this new amount exceeded the allowable amount of a rent increase. The tenant confirmed that they have not been served with a Notice of Rent Increase, but that they were informed by the landlord that they would have to move out if they did not agree to sign the new tenancy agreement.

The tenant submitted a copy of a 10 Day Notice to End Tenancy dated March 2, 2022, and argued that the landlord was attempting to end the tenancy in order to obtain more rent.

The landlord testified that both parties had agreed to a new fixed-term from November 30, 2021 to November 30, 2022 with rent set at \$2,270.00 per month,

with parking now included in the new agreement for an additional \$75.00 as noted on the new tenancy agreement..

- 2) The tenant is also requesting a rent reduction of \$100.00 per month starting from October 2021 until the dishwasher was repaired or replaced. The tenant testified that they have not had a functioning dishwasher since October 24, 2021 when there was a flood in the rental unit. The tenant argued that although the dishwasher was listed in the tenancy agreement, they did have the use of a functioning dishwasher from the beginning of the tenancy until October 2021. The tenant testified that the landlord has not been truthful about their efforts to repair and maintain the rental unit, and that they have been avoiding their obligations under the tenancy agreement.

The landlord responded that the dishwasher was included in the tenancy agreement, and therefore the tenant is not entitled to a rent reduction associated with the dishwasher.

- 3) The tenant testified that the landlord did not assist the tenant when there was a flood in the rental unit on October 24, 2021. The tenant sent the landlord a text message at 1:26 p.m. informing the landlord that the sink was full of water, and that the pipe under the sink was leaking. The tenant submitted a copy of the messages sent that day, as well as a video the tenant had posted of the clogged sink. The tenant testified that the landlord had turned their phone off, and as a result the tenant had to deal with the emergency on their own, missing work. The tenant is requesting a monetary claim for the lost wages for that day in the amount of \$203.00.

The landlord denies that they had ignored the tenant, and testified that they had called the tenant in response to the text messages, and got in contact with the strata to deal with the issue. The landlord notes that in the tenant's own evidence, the tenant had thanked the landlord for their help, which contradicts the tenant's testimony that the landlord did not help.

- 4) The tenant is also requesting monetary compensation for a day of lost wages for March 12, 2022. The tenant testified that they feared eviction and illegal entry by the landlord so they had stayed home that day.

The landlord testified that they had issued the 10 Day Notice in accordance with the Act for the tenant's failure to pay the March 2022 rent in full and on time as required by the tenancy agreement.

- 5) The tenant also discovered that the landlord had posted an online advertisement to rent out the rental unit even though the tenancy is in place until November 30, 2022. The tenant noticed that the rent was for \$2,395.00, more rent that the tenant was paying. The tenant was extremely stressed upon this discovery, and is concerned that the landlord is attempting to find a new tenant, or has already done so. The tenant is requesting an order restricting the landlord's right to enter the rental unit, for the tenant to be able to change the locks, and for the landlord to comply with the Act and tenancy agreement.

The landlord denied that they had intentions to advertise or re-rent the rental unit. The landlord testified that they had to re-activate an old listing in order to access photographs of the rent unit. The landlord testified that they have never entered the tenant's rental unit without proper notice, or without the tenant present, and testified that the tenant's fears were unfounded. The landlord notes that the rental amount had not been changed, and that this was the original listing that was posted before the unit was rented out to the tenant.

Analysis

Section 42 of the Act states the following about how a Notice of Rent Increase is to be given:

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Residential Tenancy Policy Guideline #30 states the following about Fixed-term Tenancies and Rent Increases:

D. RENEWING A FIXED TERM TENANCY AGREEMENT

A landlord and tenant may agree to renew a fixed term tenancy agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term, and if the parties do not enter into a new tenancy agreement, the tenancy automatically continues as a month-to-month tenancy on the same terms. Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent Increases are met.

H. RENT INCREASES AND FIXED TERM TENANCIES

A rent increase between fixed term tenancy agreements with the same tenant for the same unit is subject to the rent increase provisions of the Legislation, including requirements for timing and notice. To raise the rent above the maximum annual allowable amount, the landlord must have either the tenant's written agreement or an order from an arbitrator. If the tenant agrees to an additional rent increase, the landlord must issue a Notice of Rent Increase along with a copy of the tenant's signed agreement to the additional amount. The tenant must be given three full months' notice of the increase.

The *Residential Tenancy Act* provides by section 5 that:

This Act cannot be avoided

5 (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.

Section 6 (3) provides that:

(3) A term of a tenancy agreement is not enforceable if

(a) the term is inconsistent with this Act or the regulations,

(b) the term is unconscionable, or

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

The maximum allowable rent increase for 2021 was 0% (<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/rent-increases>). As noted above, rent increases between fixed term tenancy agreements, Residential Tenancy Policy Guideline #30 states that a tenant may agree to an increase above the maximum allowable amount with the following requirements:

To raise the rent above the maximum annual allowable amount, the landlord must have either the tenant's written agreement or an order from an arbitrator. If the tenant agrees to an additional rent increase, the landlord must issue a Notice of Rent Increase along with a copy of the tenant's signed agreement to the additional amount. The tenant must be given three full months' notice of the increase.

In this case, both parties had agreed to renew the fixed-term tenancy agreement for a new fixed term, with rent now set at \$2,270.00. Although \$75.00 was added for parking, the tenant was now paying \$95.00 more as of December 1, 2021. I find that the rent was raised \$95.00 above the allowable amount for 2021, which was 0%. Although the tenant may have agreed to this rent increase of \$95.00, I am not satisfied that the landlord complied with the requirements to issue a Notice of Rent Increase, and give three full month's notice of the increase.

I find that the landlord has failed to comply with the requirements of section 42 of the *Act* as well as Residential Tenancy Policy Guideline #30. As noted in section 5 of the *Act*, parties may not contact outside of the *Act* or avoid the *Act*. I find that the additional rent increase of \$95.00 was imposed in contravention of the *Act*. The monthly rent for this tenancy is hereby reduced to \$2,100.00, the original monthly rent agreed to in the original fixed-term tenancy agreement, plus \$75.00 for parking for a total of \$2,175.00 per month. This monthly rent remains in effect until increased in accordance with the *Act*. I order that any future rent increases the landlord wishes to impose must be imposed on accordance with the *Act* and legislation.

Based on the above determination, I find that the tenant is entitled to a monetary award for the rent increases paid during this tenancy from December 1, 2021 to June 1, 2022 for a total refund of $(\$95.00 \times 7 \text{ months}) = \665.00

I will now consider the remainder of the tenant's claims.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenants must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claims on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

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 matter the tenant bears the burden to prove that it is likely, on balance of probabilities, that facilities listed in the tenant’s application were 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.

Although I am not satisfied that a dishwasher is essential to the tenant's use of the rental unit, or that the inclusion of the appliance is a material term, the landlord is still obligated to give proper notice and a reduction in rent for the termination or restriction of such a facility in accordance with section 27(2) of the *Act*. Although the landlord argued that the dishwasher was not included in the payable rent, I note that the tenant did have use of a functioning dishwasher from the beginning of the tenancy until October 24, 2021.

The definition of a "tenancy agreement" is outlined in the following terms in section 1 of the *Act*:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Even in the absence of a written agreement, the right to use a facility could still be implied. In consideration of the evidence before me, it is clear that as part of this

tenancy and the payable rent, the tenant had access to, and the right to use, the dishwasher since the beginning of this tenancy. For this reason, I find that the landlord was required to provide this facility as part of the tenancy agreement unless the tenant was provided with proper notice of the termination of the facility, and a reduction in rent equivalent to the reduction in the value of the tenancy agreement as stated in section 27(2) of the Act. I find that as of the hearing date on May 20, 2022, the tenant was without a functioning dishwasher for approximately 7 months.

On preponderance of the evidence and the totality of factors comprising a *tenancy agreement* I find that a rent reduction of \$100.00 per month reasonably represents the reduction in the *value of the tenancy agreement* resulting from the loss of use of a functioning dishwasher. I am not satisfied that the landlord had provided a reasonable explanation for why the dishwasher could not be replaced or repaired within this time.

Pursuant to Sections 65(1)(f) I award the tenant a rent reduction of \$700.00 (\$100.00 x7) for the loss of use of the dishwasher for the period of October 24, 2021 to May 24, 2022. I allow the tenant an additional ongoing, pro-rated rent reduction of \$3.23 per day for the period after May 24, 2022 until the dishwasher is repaired or replaced.

The tenant is requesting compensation for the lost wages in having to deal with the flood in the rental unit. In consideration of the evidence before me, I am not satisfied that the landlord failed to respond to the tenant in a manner required by the Act. Although the tenant was understandably upset and stressed in having to manage the situation, I find that the tenant's own evidence contradicts the tenant's claims that the landlord did not provide assistance. The first text message sent by the tenant was at 1:26 p.m. on October 24, 2022, and the tenant later thanked the landlord on the same day at 5:19 p.m. with "Thanks for your help today!". I am not satisfied that the tenant has met the onus of proof to show that the tenant's lost wages were due to the landlord's negligent or deliberate contravention of the *Act*, and therefore I dismiss the tenant's claims for reimbursement of their lost wages without leave to reapply.

The tenant also applied for lost wages for March 12, 2022 as that day was the effective date of the 10 Day Notice, and the tenant feared that the landlord would enter the tenant's rental unit. In consideration of the evidence before me, I find that the tenant made the decision to stay home that date. I do not find that the evidence supports that the landlord had intentions of entering the tenant's rental unit, or had attempted to. A landlord has the right to serve a tenant with a 10 Day Notice for Unpaid Rent, which the tenant has the right to dispute if the 10 Day Notice is not valid. The issuance of a 10 Day Notice does not automatically allow a landlord to change the locks, or take vacant possession of the rental unit. Regardless, I find that the landlord did not attempt to do

either, or enter the rental unit without the tenant's permission or knowledge. Accordingly, I dismiss the tenant's monetary claim for lost wages on March 12, 2022.

The tenant also expressed concern that the landlord was attempting to re-rent the rental unit without the tenant's knowledge. It is undisputed that the landlord did re-activate an online listing, which the landlord provided an explanation for. Although the tenant may be concerned, as noted above, the landlord cannot change the locks or take vacant possession of the rental unit without a proper order to do so, or without consent of the tenant. I do not find that the evidence supports that the landlord had attempted to re-rent the rental unit, or enter the tenant's rental unit without permission or knowledge of the tenant. Accordingly, I do not find it necessary that any further orders are required at this time. The tenant's application for any orders restricting, or to set conditions on, the landlord's right to enter the rental unit is dismissed with leave to reapply.

I allow the tenant to recover the filing fee.

Conclusion

As agreed on during the hearing:

- 1) The landlord agreed to repair the dishwasher on or before June 4, 2022. If the dishwasher cannot be repaired, the landlord agreed to replace the dishwasher with a model of equal value and function or before July 4, 2022.
- 2) The tenant agreed to provide access for the repair or replacement of the dishwasher if proper notice is given by the landlord to enter the rental unit, with or without the tenant present.

I order that the monthly rent for this tenancy is set at \$2,175.00, until changed in accordance with the *Act*.

The tenant is entitled to a monetary award for the rent increases paid during this tenancy from December 1, 2021 to June 1, 2022 for a total refund of (\$95.00x7 months)=\$665.00

Pursuant to Sections 65(1)(f) I award the tenant a rent reduction of \$700.00 (\$100.00 x7) for the loss of use of the dishwasher for the period of October 24, 2021 to May 24, 2022.

I allow the tenant an additional ongoing, pro-rated rent reduction of \$3.23 per day for the period after May 24, 2022 until the dishwasher is repaired or replaced. The additional

rent reduction for dishwasher repair may be implemented by way of reducing a future monthly rent payment by the amount owed.

I find that the tenant is also entitled to recover the filing fee for this application.

Item	Amount
Refund of rent	\$665.00
Rent Reduction	700.00
Filing Fee	100.00
Total Monetary Order	\$1,465.00

I allow the tenant to implement a monetary award of \$1,465.00 for the above monetary orders by reducing a future monthly rent payment by that amount until the total monetary award is paid in full. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$1,465.00 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.

The remainder portions of the tenant's application is dismissed with leave to reapply.

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: June 20, 2022

Residential Tenancy Branch