



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

On February 27, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking a repair Order pursuant to Section 32 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking a provision of services or facilities pursuant to Section 62 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not attend the hearing at any point during the 53-minute teleconference call. At the outset of the hearing, I informed the Tenant that recording of the hearing was prohibited and she was reminded to refrain from doing so. As well, she provided a solemn affirmation.

She advised that the Landlord was served the Notice of Hearing and evidence package by registered mail on March 11, 2022 (the registered mail tracking number is noted on the first page of this Decision). She stated that this package was refused by the Landlord and then returned to sender. She then stated that she met with the Landlord approximately two weeks before this hearing and served the Notice of Hearing and evidence package to the Landlord by hand. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was deemed to have received the Tenant’s Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to a repair Order?
- Is the Tenant entitled to a rent reduction?
- Is the Tenant entitled to a provision of services or facilities?
- Is the Tenant entitled to an Order for the Landlord to comply?
- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on August 30, 2021, that rent was currently established at \$1,200.00 per month, and that it was due on the first day of each month. A security deposit of \$600.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

She then advised that she was never served a One Month Notice to End Tenancy for Cause, but was served a typed letter from the Landlord, dated February 23, 2022, indicating that her tenancy would not be renewed and that she would be required to vacate on March 31, 2022.

However, she testified that during the meeting she had with the Landlord approximately two weeks ago, he showed her a One Month Notice to End Tenancy for Cause form, but he never served her with a copy of this notice by hand that day because he stated

that that was his copy. Rather, she testified that he informed her that he mailed a completed copy of this form to her mailbox. However, she stated that the mailbox that was provided to her by the Landlord, at the start of the tenancy, was locked, and that the Landlord never provided her with a key. She stated that he told her that she was required to somehow pay to acquire a key to this mailbox.

While a finding has not been made on this matter, the Landlord is cautioned that if a locked mailbox is provided to the Tenant at the start of the tenancy, it would be reasonable to expect that the Landlord provide a key to access this. If he has served an approved notice to end the tenancy to the Tenant by mailing it, and he has never provided the Tenant with access to this mailbox, this notice may be considered as insufficiently served.

In addition, she advised that the dryer had not been functioning correctly and she brought this to the Landlord's attention in October 2021 via text message. She stated that the Landlord sent out a technician to assess this issue on November 29, 2021, and the technician vacuumed out the dryer duct. However, she submitted that the dryer still did not adequately dry her clothing. On December 10, 2021, she texted the Landlord again about this issue, and the Landlord again dispatched a technician. She stated that the Landlord simply informed her that the dryer was functioning correctly.

As the dryer was still not drying her clothing, she sent a message to the Landlord in January 2022 stating that she would withhold a portion of February 2022 rent if this issue was not rectified. Given that she received no response from the Landlord, she withheld \$180.00 from February 2022 rent. However, when she was informed by the Residential Tenancy Branch that withholding rent in this manner could jeopardize her tenancy, she paid the Landlord the remaining \$180.00 on February 25, 2022. She stated that the Landlord has not made any efforts to fix the dryer since she asked him again in January 2022. Furthermore, he even refused to address the issue at their meeting approximately two weeks ago, and allegedly mailed her a notice to end her tenancy instead.

She testified that the knobs on the dryer were broken at the start of the tenancy, and she referenced a letter submitted as documentary evidence to support her position that the dryer is still not functioning correctly. As well, she cited a text message from the Landlord, dated December 17, 2021, where she indicated that the Landlord acknowledged that parts for the dryer are being sourced and if they cannot be found, the dryer may need to be replaced. She referenced the documentary evidence

submitted to support her position that she informed the Landlord of the ongoing problem and that it is still currently unresolved. As well, she submitted copies of receipts totalling \$180.00 for her costs of doing laundry in January 2022 because she is unable to dry her clothes in the rental unit. She stated that this amount represents the loss that she has suffered each month up until the date of the hearing.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering the Tenant's dispute of a One Month Notice to End Tenancy for Cause, I note that Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. Given that it appears as if the Landlord has not used the approved form, and attempted to end the tenancy by way of a letter that he wrote himself, I am satisfied that this letter does not meet the requirements of Section 52 of the *Act*. As such, I find that the Landlord has not issued a valid notice to end the tenancy. Consequently, this tenancy continues until ended in a manner in accordance with the *Act*.

With respect to the Tenant's other claims, Section 32 of the *Act* states that the Landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 67 of the *Act* allows for an Arbitrator to determine the amount of compensation to be awarded to a party if a party has not complied with the *Act*.

When reviewing the totality of the evidence before me, I am satisfied that the Tenant has properly informed and communicated to the Landlord of the repair issue requiring the Landlord's attention. As well, she has given him ample opportunity to correct this. However, it appears as if this issue has not been adequately remedied, and that the Landlord has thus been negligent in his duties to address this repair request. As a result of the Landlord's non-compliance, I am satisfied that the Tenant has suffered from a

loss of use of the rental unit, despite paying full rent without any compensation for having to live through this situation. I find that the Landlord's ineffective management of this repair is a breach of the *Act*. Consequently, I am satisfied that the Tenant has established a loss due to this breach. Given that the Landlord attempted to end the tenancy with his own written letter, I find this supports the conclusion that the Landlord has little knowledge of his rights and responsibilities as a Landlord under the *Act*.

Based on the consistent and undisputed evidence before me, I am satisfied that the the Landlord has neglected to comply, and then effect the necessary repairs to date. As it is the Landlord's responsibility under the *Act* to repair and maintain the rental unit, I find that he is responsible for rectifying this repair issue. As the Landlord has been aware of this ongoing issue for such a significant period of time, I **Order** the Landlord to hire a qualified professional to investigate this deficient dryer within a week of being deemed to receive this Decision.

I further **Order** that the Landlord have the necessary repair commence, by a qualified professional, within a week of receiving the assessment of the required repair. Alternately, should a repair not be viable, I **Order** that the Landlord replace the dryer with one that is in sufficiently working condition, within two weeks of receiving the assessment by the qualified professional.

As a note, the Tenant may serve a copy of this Decision to the Landlord in a manner in accordance with the *Act* to expedite receipt of this Decision, and consequently the start of the repair Order timeframe.

With respect to the Tenant's claims for compensation, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

In considering the amount of compensation awarded to the Tenant, it is clear that the Tenant has done everything in her power to inform the Landlord of the issue and has given him ample opportunity to correct it. I accept the undisputed evidence that this dryer issue has been a problem since October 2021, that the Tenant was forced to pay for laundry as a result of the Landlord's inaction, that she has suffered from a loss of use of the rental unit, and that she has been paying full rent since the start of the tenancy without any compensation for having to live through this situation.

Based on the totality of the evidence before me, I am satisfied that due to the Landlord's lack of sufficient action, the Tenant would not have had to pay for laundry had the Landlord fulfilled his obligations under the *Act* by correcting this issue in a timely manner. With respect to the loss that she has suffered for having to live under these conditions from October 2021 to the date of the hearing, Section 65(1)(f) of the *Act* allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement. I find that the failure of the Landlord to comply with the Tenant's repair request has resulted in a loss of value of the tenancy, and that the Tenant is entitled to a monetary award.

The Tenant suggested a rent reduction of \$360.00 as appropriate; however, I note that her receipts are for full laundry service per month. While I acknowledge the inconvenience of the Tenant having to alter her daily routine by doing laundry elsewhere, I do not find that \$180.00 for one month of doing laundry is equivalent to the loss in value of not having this dryer available in the rental unit. I am also cognizant that the longer that this continues, the more significant the loss becomes.

As such, I find that an appropriate amount for the loss in value of this tenancy resulting from the Landlord's failure to address the repair from October 2021 until June 2022 is **\$75.00** per month. In accordance with Section 65(1)(f) of the *Act*, I issue a retroactive monetary award in the Tenant's favour in the amount of **\$675.00** (October 1, 2021 to June 30, 2022), to compensate the Tenant for the loss in value of her tenancy. As the Tenant was successful in this claim, I find that the Tenant is also entitled to recover the

\$100.00 filing fee paid for this Application. As such, the Tenant is permitted to withhold the \$675.00 awarded and the \$100.00 filing fee (total = **\$775.00**) from July 2022 rent.

Moreover, if the Landlord fails to complete the repair Ordered above in an expedient manner, and does not complete what has been Ordered of him by July 1, 2022, I Order that the monthly rent for this tenancy for July 2022 be reduced by an additional **\$100.00**.

Furthermore, on each successive month where the repair has not been completed above, the Tenant is authorized to reduce the monthly rent by a **further \$25.00 until such time as the repair is completed, in its entirety, pursuant to this Decision**. In effect, this is an escalating rent reduction until this repair is completed (IE. July 2022 rent reduced by \$100.00, August 2022 rent reduced by \$125.00, September 2022 rent reduced by \$150.00 etc.).

Following the completion of this repair, this rent reduction will cease. The Tenant's rent will return to the normal, monthly amount required by the tenancy agreement on the month following the completion of this repair.

Conclusion

I **Order** that the Landlord conduct a repair to the above noted issue, as soon as is reasonably possible and in accordance with this Decision. This repair must be completed by a qualified professional.

The Tenant is entitled to withhold the amount of **\$775.00**, in satisfaction of this claim to date, from July 2022 rent. In addition, starting on July 1, 2022, on each month where the repair has not been completed, the Tenant is authorized to reduce the monthly rent by a further amount as stipulated above until such time as the repair is completed in its entirety, pursuant to this Decision.

The Tenant is also instructed to inform the Landlord of these deductions to prevent the Landlord from serving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for deficient rent.

Should a dispute arise as to the extent to which the repair Ordered has been completed sufficiently, I **Order** that the rent reduction continue until such time as the Landlord has applied for and obtained an Order, from an Arbitrator appointed under the *Act*, to modify

the reduced rent. The Landlord is at liberty to apply for a determination as to the Landlord's compliance with this Decision once the Landlord has undertaken the repair Ordered.

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 9, 2022

Residential Tenancy Branch