



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, RP, RR, PSF, LRE, FFT

Introduction

This hearing was reconvened from a hearing on July 14, 2022 regarding the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- disputing a rent increase above the amount allowable under the Act pursuant to section 41;
- an order to allow the Tenants to reduce rent by \$50.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order for the Landlord to make repairs to the rental unit pursuant to section 32;
- an order that the Landlord provide services or facilities required by law pursuant to sections 27 and 62;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to sections 29 and 70(1); and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The original hearing resulted in an interim decision issued on July 14, 2022 (the "Interim Decision"), in which I ordered the Tenants to serve the Landlord with a copy of the original notice of dispute resolution proceeding package, the Interim Decision, the notice of reconvened hearing, and the Tenants' documentary evidence by July 22, 2022.

The Tenants attended this reconvened hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Landlord did not attend this hearing. I left the teleconference hearing connection unlocked until 9:40 am in order to enable the Landlord to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Tenants and I were the only ones who had called into the hearing.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Tenants confirmed they sent a copy of the original notice of dispute resolution proceeding package, the Interim Decision, the notice of reconvened hearing, and the Tenants’ documentary evidence (collectively, the “NDRP Package”) to the Landlord by registered mail on July 17, 2022. The Tenants submitted a Canada Post registered mail receipt with a tracking number in support. That Canada Post tracking number is referenced in the cover page of this decision. Tracking records show that the package was delivered on July 19, 2022. Based on the foregoing, I find the Landlord was served with the NDRP Package on July 19, 2022 in accordance with sections 88(c) and 89(1)(c) of the Act.

Preliminary Matter – Landlord’s Non-attendance

Rule 7.3 of the Rules of Procedure states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Having found the Landlord to have been duly served with notice of this hearing, I directed that the hearing be conducted in the absence of the Landlord.

Issues to be Decided

1. Are the Tenants entitled to dispute an illegal rent increase by the Landlord?
2. Are the Tenants entitled to an order for the Landlord to make repairs?
3. Are the Tenants entitled to an order for the Landlord to provide services or facilities?
4. Are the Tenants entitled to reduce rent for repairs, services or facilities agreed upon but not provided?
5. Are the Tenants entitled to an Order to suspend or set conditions on the landlord’s right to enter the rental unit?

6. Are the Tenants entitled to recovery of their filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is a coach house on the rental property. The Landlord resides in the main suite of the house on the property, which also has two basement suites occupied by other tenants.

The Tenants moved into the rental unit in or around May or June 2020. Rent was \$1,500.00 per month, shared with a third roommate at the time. After their roommate moved out, the Tenants entered into a written tenancy agreement with the Landlord on November 1, 2021, whereby rent was reduced to \$800.00 per month. The tenancy is currently for a fixed term ending on November 1, 2022. The Landlord holds a security deposit of \$650.00 in trust for the Tenants, which was carried over from their previous tenancy. A copy of the tenancy agreement dated November 1, 2021 has been submitted into evidence.

In their application materials, the Tenants submit that the Landlord has asked to increase the rent to \$1,300.00 per month despite having signed the tenancy agreement with rent of \$800.00 per month. The Tenants testified that the Landlord has been giving the Tenants a hard time by threatening to turn off their utilities and threatening the Tenants with eviction.

The Tenants testified that the laundry machines which the tenants had previously shared with their neighbours on the rental property broke in March 2022.

The Tenants testified that the Landlord did not allow the Tenants to have laundry machines inside the rental unit, and the tenancy agreement indicated that “separate laundry” would be provided.

The Tenants submit that the Landlord has since refused to repair the laundry machines despite the Tenants’ requests. The Tenants submitted screenshots of text messages that they sent to the Landlord.

The Tenants testified that the tenants living in the basement suites have been permitted to use the Landlord's laundry facilities in the main house. The Tenants testified that the landlord refused to let the Tenants also use those new facilities. The Tenants testified that the Landlord has blocked off access to the old laundry area. The Tenants testified that the Tenants have had to take their laundry to laundromats for cleaning since March 2022. The Tenants testified that they wash 2 to 3 loads each trip due to one of the Tenants' health condition and the other's job in health care. The Tenants submitted several transaction records showing their laundromat expenses ranging from \$18.00 to \$21.00 per visit.

In their application materials, the Tenants submit that the Landlord has withheld a service or facility required under their tenancy agreement. The Tenants testified that due to the parties' dispute about rent, the Landlord turned off the Tenants' internet access in the rental unit for 2 days in March 2022. The Tenants submitted screenshots of text message correspondence with the Landlord in support.

The Tenants testified that the Landlord has had individuals attend at the rental unit to try to evict the Tenants and take their keys. The Tenants testified that in January 2022, the Landlord came to the rental unit to ask the Tenants to leave. The Tenants testified that they had the conversation inside the rental unit and the Landlord was "loud" and "aggressive". The Tenants testified that on June 14, 2022, the Landlord physically entered the rental unit and said that one of the Tenants must leave. The Tenants testified that these incidents caused them stress. The Tenants testified that the Landlord's wife and mother would also knock on the Tenants' door once or twice a month.

The Tenants testified that the Landlord would take the Tenants' mail instead of leaving it in the mailbox. The Tenants testified that there are bugs entering the rental unit due to overgrown grass on the rental property.

Analysis

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.

1. Are the Tenants entitled to dispute an illegal rent increase by the Landlord?

Sections 41, 42, and 43 of the Act state as follows:

Rent increases

41 A landlord must not increase rent except in accordance with this Part.

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 payable for the rental unit;
- (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.

Amount of rent increase

43(1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) *[Repealed 2006-35-66.]*

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The 2022 maximum rent increase is 1.5%.

The Act defines “rent” to include “money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities”.

In this case, I have reviewed a copy of the tenancy agreement signed by the parties and find that the Tenants currently pay rent of \$800.00 per month. I accept the Tenants’ undisputed testimony that the Landlord has been asking for a rent increase to \$1,300.00 per month. I find the Landlord has not provided the Tenants with notice in writing of a rent increase as required under section 42 of the Act. I further find that the rent increase sought by the Landlord exceeds the maximum allowable increase of 1.5%.

Pursuant to section 62(3) of the Act, I order that the Landlord comply with the Act in respect of rent increases. The Tenants’ rent remains at \$800.00 per month until such time as the Landlord increases it in compliance with the Act.

2. Are the Tenants entitled to an order for the Landlord to make repairs?

Section 32(1) of the Act states:

Landlord and tenant obligations to repair and maintain

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.

The Tenants testified that they have requested the Landlord to clean the area outside the rental unit since bugs have been entering into the rental unit. I note the Tenants submitted text messages of their request to the Landlord into evidence, but did not clearly describe the remedy sought in their application. In any event, I find the Tenants have not provided any photographs showing the conditions of the rental unit and the common areas of the rental property. I find that the Tenants have not provided sufficient evidence to show that the Landlord has not maintained the rental property as required under section 32(1) of the Act. Accordingly, I decline to issue any orders under this part.

The Tenants also seek repairs to be made to the laundry machines, which I will deal with under the Tenants’ claim for the Landlord to provide services or facilities.

3. Are the Tenants entitled to an order for the Landlord to provide services or facilities?

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.

Residential Tenancy Policy Guideline 8. Unconscionable and Material Terms states:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

In this case, I find that the provision of laundry facilities is a term of the parties' tenancy agreement (at paragraph 3(b) on page 2). I accept the Tenants' testimony that one of them has a health condition and the other works in health care, which makes it important for the Tenants to have access to laundry facilities on the rental property. Based on the Tenants' undisputed testimony, I find that the provision of laundry facilities is a material term of the parties' tenancy agreement.

Accordingly, I find that the Landlord must not terminate the Tenants' laundry facilities under section 27(1)(b) of the Act.

Pursuant to section 62(3) of the Act, I order that the Landlord restore the Tenants' access to laundry facilities (washer and dryer) on the rental property within **fifteen (15) days** of the date of this decision, by repairing or providing alternative laundry machines.

4. Are the Tenants entitled to reduce rent for repairs, services or facilities agreed upon but not provided?

Residential Tenancy Policy Guideline 22. Termination or Restriction of a Service or Facility ("Policy Guideline 22") states:

D. BURDEN OF PROOF

Where the tenant claims that the landlord has restricted or terminated a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant.

There are six issues which must be addressed by the landlord and tenant.

- whether it is a service or facility as set out in Section 1 of the Legislation;
- whether the service or facility has been terminated or restricted;
- whether the provision of the service or facility is a material term of the tenancy agreement;
- whether the service or facility is essential to the use of the rental unit as living accommodation or the use of the manufactured home site as a site for a manufactured home;
- whether the landlord gave notice in the approved form; and
- whether the rent reduction reflects the reduction in the value of the tenancy.

Section 1 of the Act defines a “service or facility” to include “laundry facilities” that are provided or agreed to be provided by the landlord to a tenant of a rental unit.

Based on the Tenants’ undisputed testimony and evidence, I am satisfied that:

- the laundry machines (washer and dryer) previously used by the Tenants in a common area of the rental property fall under the definition of a “service or facility” under section 1 of the Act;
- the Tenants’ use of the laundry machines has been terminated since March 2022 when the Landlord refused to repair the machines or provide replacements;
- although I do not find laundry facilities to be “essential” to the use of the rental unit as living accommodation, I have found the provision of laundry facilities to be a term of the tenancy agreement (at paragraph 3(b) on page 2) and I have found such a term to be a material term of the agreement;
- the Landlord did not give notice in the approved form to terminate the Tenants’ access to the laundry facilities and did not give the Tenants a corresponding rent reduction; and
- the tenancy has been reduced in value due to the loss of the laundry facilities, which warrants a rent reduction award for the Tenants.

Section 65(1)(f) of the Act states:

Director's orders: breach of Act, regulations or tenancy agreement

65(1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

[...]

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement; [...]

Policy Guideline 22 further states:

C. RENT REDUCTION

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

In this case, I find that the Tenants have suffered a reduction in the value of their tenancy due to the termination of laundry facilities on the rental property by the Landlord. I accept the Tenants' evidence that they have incurred laundromat expenses of around \$18.00 to \$21.00 per visit. As such, I am satisfied that the rent reduction of \$50.00 per month sought by the Tenants is reasonable in the circumstances.

Pursuant to section 65(1)(f) of the Act, I grant the Tenants a past rent reduction of \$50.00 per month from March 2022 to August 2022, and an ongoing rent reduction of \$50.00 per month starting on September 1, 2022 until the Tenants' access to laundry facilities has been restored.

5. Are the Tenants entitled to an Order to suspend or set conditions on the landlord's right to enter the rental unit?

Section 29(1) of the Act states:

Landlord's right to enter rental unit restricted

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

I accept the Tenants' undisputed testimony that the Landlord entered the rental unit in January and June 2022, and that the Tenants felt stressed by the interactions.

Pursuant to section 70(1) of the Act, I order the Landlord and the Landlord's agents to refrain from entering the rental unit except in accordance with the requirements of the Act.

6. Are the Tenants entitled to recovery of their filing fee?

The Tenants have been successful on this application. I award the Tenants reimbursement of their filing fee pursuant to section 72(1) of the Act.

The total compensation awarded to the Tenants to the date of the hearing is calculated as follows:

Item	Amount
Retroactive Rent Reduction for Loss of Laundry Facilities from March 2022 to August 2022 (\$50.00 per month x 6 months)	\$300.00
Reimbursement of Filing Fee	\$100.00
Total	\$400.00

Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to deduct a one-time amount of **\$400.00** from rent payable to the Landlord, plus **\$50.00** per month beginning on September 1, 2022 until the date that the Tenants' access to the laundry facilities is restored.

Conclusion

I hereby order that the Landlord:

1. comply with the Act when issuing rent increases to the Tenants;
2. refrain from entering the rental unit except in accordance with the requirements of the Act; and
3. restore the Tenants' access to laundry facilities (washer and dryer) on the rental property within **fifteen (15) days** of the date of this decision, by repairing or providing alternative laundry machines.

The Tenants' rent remains at \$800.00 per month until such time as the Landlord increases it in compliance with the Act.

I award the Tenants a retroactive rent reduction of \$50.00 per month from March 2022 to August 2022, an ongoing rent reduction of \$50.00 per month until the date that laundry facilities are restored, and reimbursement of the Tenants' filing fee for this application.

The Tenants are authorized to deduct a one-time amount of **\$400.00** from rent payable to the Landlord and to deduct an additional **\$50.00** per month beginning on September 1, 2022 until the date that the Tenants' access to the laundry facilities is restored.

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: August 31, 2022

Residential Tenancy Branch