



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, PSF, OLC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant JG (the tenant) and landlord YZ (the landlord) attended the hearing. The tenant was assisted by SH and HL. The landlord was assisted by MT. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that

each party was served with the respective materials in accordance with section 89 of the Act.

Preliminary Issue – Severed Claims

The notice of dispute resolution proceeding (the application) states:

01 - I want the landlord to provide services or facilities required by the tenancy agreement or law: My landlord avoid obligation under RTA and the tenancy agreement. She changed the use of laundry room and locked it in Sept 2021. She rejected providing me a laundry that complies with the health, safety and housing standards required by law.

02 - I want the landlord to comply with the Act, regulation and/or the tenancy agreement: According to the terms of the tenancy agreement that we signed in Sept 2017, the rental unit is entire townhouse include the basement. But the landlord forcibly occupied the north room in the basement without giving me a legal written notice in advance and rent reduction.

The amendment states:

I want compensation for my monetary loss o other money owed: \$6,900.00.
I want to reduce rent for repairs, services or facilities agreed upon but not provided: \$600.00 per month.

At the outset of the hearing the tenant affirmed twice that she is only seeking a monetary compensation and a rent reduction. The landlord stated she understands the tenant's claims are only for the monetary compensation and a rent reduction.

The hearing started at 9:30 AM. I heard the tenant's testimony until 10:23 AM, when the tenant said that she is also seeking an order for the landlord to allow the tenant to access the laundry, as stated in topic one of the application. The tenant presented her evidence for approximately five more minutes and the landlord started presenting her response evidence. I allowed the tenant to present her evidence related to accessing the laundry, as this is listed in topic one of the application.

At approximately 10:55 AM both parties agreed they presented all their evidence regarding the claim for an order for the landlord to allow the tenant to access the laundry.

Residential Tenancy Branch Rule of Procedure 6.1 states the arbitrator will conduct the dispute resolution process in accordance with principles of fairness.

I severed the tenant's claims for an order for the landlord to comply with the act, a rent reduction and a monetary order for loss (the remaining claims), as the landlord still needed more time to present her response evidence and I could not proceed with the hearing due to time constraints. I find that adjourning the hearing would be prejudicial to the parties, as I would not be able to render a decision until the next hearing and I find that the claim for accessing the laundry is more urgent than monetary remaining claims.

The tenant is at liberty to submit a new application for the remaining claims.

I find that severing the remaining claims is procedurally fair, as the tenant is allowed to submit a new application for these claims, and I was ready to render a decision for the claim for an order for the landlord to allow the tenant to access the laundry.

Issues to be Decided

Is the tenant entitled to:

1. an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate the application.

Both parties agreed the ongoing tenancy started in September 2017. Monthly rent is \$2,000.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,000.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The tenancy agreement is the Residential Tenancy Branch (RTB) form 1. It states the rental unit is located at the address listed on the cover page of this decision. It does not contain an addendum.

The tenant testified the rental unit is the entire townhome, including access to the laundry with a washing machine and a dryer located in the furnace room in the basement.

The tenant affirmed that in October 2021 the landlord changed the laundry from a laundry room to the furnace room, but the tenant could continue to use the laundry.

The RTB emailed a decision to the parties on December 12, 2022 cancelling the landlord's notice to end tenancy.

The tenant stated that on December 15, 2022 the landlord served a handwritten notice. It states:

[...] The owners dismantled the washing and dryer machines. From today on both the owners and the tenants can no longer use these machines.

This is the written notice from owners to tenants.

The tenant said that since December 15, 2022 she has not been able to use the laundry.

The landlord testified that she was aware that the tenants used the washing machine and the drier, but they could not use these machines. The landlord served the December 15, 2022 notice a few days before December 15, 2022 because the tenants successfully cancelled the landlord's notice to end tenancy and the tenants were complaining about the washing machine and the dryer. The landlord did not reduce the rent.

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 the case is on the person making the claim.

Section 27 of the Act addresses the landlord's ability to terminate or restrict services of facilities:

- (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.

RTB Policy Guideline 01 states:

1. A landlord must continue to provide a service or facility that is essential to the tenant's use of the rental unit as living accommodation.
2. If the tenant can purchase a reasonable substitute for the service or facility, a landlord may terminate or restrict a service or facility by giving 30 days' written notice, in the approved form, of the termination or restriction. The landlord must reduce 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.

Section 1 of the Act defines that service or facility includes laundry facilities.

Based on the tenant's convincing testimony, the tenancy agreement and the landlord's testimony admitting the landlord was aware that the tenant used the laundry, I find the tenant was authorized to use the laundry.

I accept the uncontested testimony and the December 15, 2022 notice that the landlord terminated the tenant's access to the laundry on December 15, 2022 and the landlord did not reduce the amount of rent.

The December 15, 2022 notice is not in the approved form (RTB form 24), as required by section 27(2) of the Act.

Based on the above, I find the landlord breached section 27(2) of the Act by terminating the tenant's access to the laundry on December 15, 2022 without providing a notice in the approved form 30 days in advance and without reducing rent.

Section 62(3) of the Act states: "The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies".

I order the landlord to allow the tenant to access the laundry facilities in the furnace room without restrictions within 5 days from the date of this decision.

As stated in the topic "preliminary issue" the tenant is at liberty to submit an application for monetary compensation.

As the tenant is successful with the application, pursuant to section 72 of the Act, I authorize her to recover the \$100.00 filing fee. I order that this amount may be deducted from a future rent payment

Conclusion

Per sections 27(2) and 62(3) of the Act, I order the landlord to allow the tenant to access the laundry facilities in the furnace room without restrictions within 5 days from the date of this decision.

Pursuant to section 72(2)(a) the tenant is authorized to deduct \$100.00 from the next rent payment to recover the filing fee.

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: January 09, 2023

Residential Tenancy Branch