



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      PSF, OLC, FFT

### **Introduction**

This hearing was reconvened from an adjourned hearing originally scheduled for November 25, 2022.

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

The landlord was represented by their agents, DH and DW, as well as their legal counsel KM. Six of the seven tenants listed on this application attended the hearing. 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.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. All parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. All parties confirmed that they understood.

All parties in attendance confirmed that there were no issues with the service of each other's evidentiary materials, and confirmed that they were prepared to proceed with the reconvened hearing.

### **Issues**

Are the tenants entitled to an order for the landlord to provide services or facilities required by law?

Are the tenants entitled to an order for the landlord to comply with the *Act* and tenancy agreements?

Are the tenants entitled to recover the filing fee for this application from the landlord?

### **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 application pertains to the use of a pay-per-use laundry facility in a 14 unit rental building. The tenants received a letter dated September 30, 2022, which was posted on their doors, informing the tenants that “As of November 1, 2022, the laundry room will no longer be available. There are laundry facilities at...” A second letter was issued to the tenants on October 6, 2022, which was meant to provide “some context for the announcement of our laundry room closure on November 1, 2022”. The landlord explained that they were faced with increasing operating costs, and had to reduce costs. The landlord’s position is that the laundry facility is not an essential service, or a material term of the tenancy agreement, and thus may be removed. The landlord noted that only a few tenancy agreements actually note the inclusion of the laundry facility, and the landlord further argued that the tenants had reasonable alternatives of nearby laundromats to serve their needs.

The tenants in attendance, and on this application, were collectively opposed to the permanent withdrawal of this facility as the tenants considered the facility a material term of their tenancy agreements, and although the majority of the written agreements did not specifically note that the laundry facility was included, the tenants argued that each tenant was shown the laundry facility during their initial walk-throughs, and were provided with access since the beginning of their tenancies. Each tenant provided their own submissions of how the laundry facility is material to their specific tenancies, as summarized below.

### **Unit 101**

AS has been a tenant here since October 2021. AS described how the landlord’s property manager at the time, SM, showed AS the laundry facility, and how to access it. AS states that they were suffering from a health issue at the time, which prevented AS from being able to stand for more than a few minutes unsupported. AS provided a doctor’s certificate dated and signed September 2, 2021 which states that “standing limited to 10-15 mins; walking limited to 100m”. AS testified that they would not have agreed to enter into the tenancy agreement unless it was clear that onsite laundry was

included because of this health condition. AS submits that the laundry facility was confirmed by SM as included, and AS was provided access since the beginning of the tenancy.

### **Unit 103**

NF resides in her rental unit with her husband. NF testified that their tenancy agreement specifically states that the washer and dryer in the common area is included. NF testified in the hearing that the onsite laundry facility was important to them, and they would not have entered into the tenancy without this. NF testified that they had bad knees, and they were in and out of a wheelchair. NF testified that they also used a cane occasionally. NF testified that they work out of town, and is only in town two days a week. NF testified that this leaves them only 48 hours or less to accomplish any chores or tasks, which is further complicated by the fact the couple only has one vehicle which NF uses for work. NF testified that it would be cost prohibitive for their husband to take a cab to and from the laundromat.

In cross examination, NF testified that their husband is able to walk to work, which is only 15 minutes away, and the grocery shopping is completed on the weekend when NF is in town. NF testified that they would be unable to walk to and from the laundromat considering the amount of laundry that would have to be carried, and that they do not take public transit due to concerns about Covid-19.

### **Unit 104**

TN has been a tenant here since April 2020. TN states that they were shown their parking space, garbage and recycling area, as well as the laundry room at the beginning of their tenancy. TN was provided with a key for access to the laundry room, and subsequently the entry code when the lock was changed.

TN states that they are on disability, with limited income. TN testified that although they do not want to disclose the specifics of their disability, they can confirm under oath that they receive disability payments as they are qualified to do so. TN noted that it was not easy to qualify for disability payments, which supports the extent of their disability. TN testified that their disability can prevent them from being able to even leave their home, and they have always only rented in buildings where there is access to onsite laundry.

TN testified that on a good week, they are able to go out and perform chores, but on a bad week they may not be able to leave. TN testified that this changes hour to hour, day to day. TN testified that they are sometimes not capable of driving because of their disability, and that they do laundry about twice per week.

### **Unit 201**

JG testified that they moved in on or about March 8, 2022, and viewed the property on February 16, 2022. JG testified that they were shown the laundry room as well as the parking area at that time. JG testified that they are self-employed, and work in the day time, six days per week. JG testified that they are unable to drive at night or in the dark, and only have Sundays off to accomplish their non-work tasks if they are not working additional hours. JG testified that they work as many hours as possible in order to pay the monthly rent. JG testified that they do their laundry mostly after 9:00 p.m. when they are finished work, and have time to do laundry.

### **Unit 205**

CW and JW moved into the complex in July 2018. CW and JW state that they were shown the unit and laundry room by DW and their partner, and the tenants agreed to sign the tenancy agreement with the understanding that the laundry facility was included in the tenancy agreement despite the fact that it was not explicitly written into the lease.

CW and JW submit that they would not have moved into a building with no laundry facilities due to lifelong, chronic disabilities. CW, the sole breadwinner, has fibromyalgia, and can only work twenty-eight hours maximum per work because of their condition. JW has been unable to work since 2019, and has been disabled for thirty years. JW testified that they struggle even with the two flights of stairs in order to access the laundry room. JW does laundry on "good days". CW and JW also pointed out that accessing an off-site laundry facility would be even more difficult in the winter during heavy snowfalls. CW and JW consider an onsite laundry facility essential and material to their tenancy agreement, and the removal of the facility would pose such a significant hardship that they would have to move out.

### **Unit 635-D**

RG is a long-term tenant of close to twenty years at this complex. RG states that onsite laundry has always been available to them as part of their tenancy.

### **Analysis**

Section 1 of the Act defines a service or facility:

**"service or facility"** includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

- (a) appliances and furnishings;
- (b) utilities and related services;
- (c) cleaning and maintenance services;
- (d) parking spaces and related facilities;

- (e) cablevision facilities;
- (f) laundry facilities;
- (g) storage facilities;
- (h) elevator;
- (i) common recreational facilities;
- (j) intercom systems;
- (k) garbage facilities and related services;
- (l) heating facilities or services;
- (m) housekeeping services;

Pursuant to this section, laundry facilities are considered a facility.

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;

In this case, whether laundry facilities were selected on the tenancy agreement or not, I find the evidence clearly shows that the tenants in this application were not only shown the laundry facility, but they were all provided access to the laundry facility since the beginning of their tenancies. I find that by providing access to, and use of, the facility, the landlord had clearly implied that this was an included facility as part of the tenants’ tenancy agreements.

Section 27 of the Act states the following about the termination or restricting of services or facilities:

### **Section 27 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 find that for the purposes of this matter pursuant to Section 27(2)(b) that laundry facilities are considered qualifying **services or facilities as** stipulated in the **Definitions** of the *Act*.

As noted in RTB Policy Guideline #8, 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. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

I must focus on the importance of the facility in the overall scheme of the tenancy agreement. The tenants have fought hard to keep this facility, not out of mere convenience, but out of sheer necessity. I find that each tenant had access to, and have used, the laundry facility on a regular basis since the beginning of their tenancies. RTB Policy Guideline #22 states the following:

"In determining whether a service or facility is essential, or whether provision of that service or facility is a material term of a tenancy agreement, an arbitrator will also consider whether the tenant can obtain a reasonable substitute for that service or facility. For example, if the landlord has been providing basic cablevision as part of a tenancy agreement, it may not be considered essential, and the landlord may not have breached a material term of the agreement, if the tenant can obtain a comparable service."

A search of nearby laundromats yields three laundry facilities, with the closest being 2.1km away, with a estimated 26 min walk time, or 5 min drive. The hours of that facility is 7am-11pm, 7 days a week. The second furthest facility is 2.2 km away, or a 27 min walk or 5 min drive. The hours for that laundromat is 9am-5pm, closed Tuesdays. The third facility is 3.7 km away, which is 50 minutes walking or a 7 minute drive. That facility had much more limited hours and is open 9-6pm daily, with the exception of weekends when the laundromat is open 9-4pm only.

With the closest laundromat being 2.1 km away, the tenants would have to walk almost an hour round trip while carrying their laundry. This estimate is based on satisfactory weather conditions, and for a person without mobility or disability issues. An alternative would be to drive, which would require both access to a car, and the time and ability to drive. Although the tenants did not provide documentary evidence of their disabilities, as noted by the landlord's counsel, the tenants gave detailed evidence of the specific

hardships and circumstances that the removal of the laundry facility would have on their lives. This included mobility issues, time constraints, and socioeconomic barriers.

Given the tenants' age, medical conditions, hardships, and circumstances, the removal of such a facility would have a significant negative impact on the lives of the tenants, and for some, the negative impact would leave the tenants with no choice but to end their tenancies. I do not find that access to the laundry facility to be about mere convenience in these cases.

Based on the testimony before me, I find that the provision and use of the laundry facility is a material term of the tenancy agreement for all the tenants in this dispute. I make this finding on the basis that having an accessible on-site laundry facility was an important consideration for these tenants when choosing to rent in this building, and therefore this facility must be maintained.

As such, the landlord must not stop providing this facility. I find that the landlord has attempted to remove the tenants' access to the laundry facility, which would be considered a breach of a material term of the tenancy agreement. I order that the landlord continue to provide the tenants with the same level of access to the laundry facility as they had since the beginning of their tenancies.

As the tenants were successful with this application, I allow the tenants to recover the filing fee for this application. I order that the landlord reimburse the primary applicant, AS, with the \$100.00 filing fee paid by AS.

### **Conclusion**

I order that the landlord continue to provide the tenants with the same level of access to the laundry facility as they had since the beginning of their tenancies.

I allow the tenants to recover the \$100.00 filing fee. I allow the tenant AS to implement a monetary award of \$100.00 for recovery of the filing fee by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, AS is provided with a Monetary Order in the amount of \$100.00, and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) 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.

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: February 10, 2023