



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding P255 ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AAT, LRE, PSF, OLC, FFT

Introduction

On January 12, 2023, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking the following relief:

- for an order to allow access to the Tenant or their guests.
- to suspend or restrict the Landlords right to enter the rental unit or site.
- for an order for the Landlord to provide services or facilities required by the tenancy agreement or law.
- for the Landlord to comply with the Act, Regulation, or tenancy agreement.

The matter was set for a conference call hearing. The Tenant and Landlord appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. The parties confirmed that they have exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to an order allowing access for the Tenant or their guests.
- Is the Tenant entitled to an order to suspend or restrict the Landlord's right to enter the rental unit or site.
- Is the Tenant entitled to an order for the Landlord to provide services or facilities required by the tenancy agreement or law?

- Is the Landlord required to comply with the Act, Regulation or the tenancy agreement?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on March 1, 2022, as a one year fixed term tenancy. Rent in the amount of \$1,650.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$850.00 and a pet damage deposit of \$850.00.

Access to the Tenant or Guests.

The residential property is a multi unit rental building with two floors and 11 units. The residential property contains a laundry room with two washing machines and two dryers that are free to use as laundry is included in the rent.

The Tenant testified that the Landlord is threatening to restrict or remove her access to the laundry facilities due to an allegation of damage to a laundry machine by the Tenant's son. The Tenant testified that her son did not do any damage to the laundry machine, but she acknowledged that he holds his middle finger up to the camera located in the laundry room. The Tenant stated that she offered to do laundry for her son to quell any future problems. The Tenant testified that her laundry privileges have not been revoked; however, she received an email from the Landlord stating her privileges would be revoked if her son continues to use the laundry machines.

In reply, the Landlord stated that there is no restriction on when laundry can be done and that the tenancy agreement specifies that the laundry is only for the use of residents living in the building. She stated that the Tenant's other son was observed doing laundry so the Landlord stopped the laundry machine because of he is not an occupant and because of his items banging around inside a machine.

The Landlord stated that the Tenant's son was observed on the camera footage purposely slamming the doors of the laundry machines when he was not doing laundry. The Landlord stated that she had to have the door fixed at a cost of \$93.75. After the Landlord threatened to take use of laundry away, the Tenant's son began showing his middle finger to the camera. The Landlord provided video recordings of the Tenant's son using the laundry.

The Landlord stated that she often finds the Tenant's son walking around the residential property without footwear and has asked the Tenant's son to wear footwear for safety reasons.

The Landlord is considering taking away the service/ facility of laundry from the Tenant and may compensate the Tenant for a loss of the service.

Landlords Right of Entry

The Landlord is the Landlord for all the residents /occupants of the residential building.

The Tenant stated that the Landlord is unnecessarily lurking around the common areas of the residential property. The Tenant clarified that the Landlord has not entered her unit without invitation or written notice, but she has followed the Tenant into the storage room and she records the phone calls made between them.

The Tenant stated that the Landlord is always watching the camera and she sometimes eats her lunch in the common areas. The Tenant stated that she is not sure that the Landlord is following the law regarding keeping digital recordings and the information of others. The Tenant stated that the Landlord shares the personal information of Tenants with other occupants of the residential property.

In reply, the Landlord stated that she has every right to be on the residential property as she manages the building 8 -12 hours per day. She stated that she cleans the building, cuts the lawn, and takes care of the building. She stated that she not entered the Tenant's unit without permission and has not harassed the Tenant. She stated that she is trying to hold the Tenant accountable to the rules.

The Landlord stated that the video cameras have been invaluable to her for dealing with occupants of the property and tenancy issues and she often refers to the video footage when an incident is reported. She stated that she works on her own and has been assaulted in the past.

The Landlord stated that she takes offence to the Tenant calling her mentally unfit.

Services or Facilities/ Quiet Peaceful Enjoyment

The Tenant clarified that this issue is for the Landlord to protect her right to quiet peaceful enjoyment of her tenancy.

The Tenant testified that she is facing constant badgering and threats from the Landlord. She stated that she gets many emails and text messages from the Landlord. She stated that the Landlord asks her unnecessary questions about the laundry and has asked questions about her son.

The Tenant stated that the Landlord has threatened to evict her for cause.

The Tenant stated that privacy is important to her and that the security cameras are used against tenants rather than for the purpose of security. The Tenant stated that the Landlord's behavior is causing her to feel emotional distress. The Tenant did not provide any documentary evidence of a law regarding requirements of digital recordings and/or information privacy.

In reply, the Landlord stated that she is trying to hold the Tenant accountable to the rules. The Landlord stated that the Tenant is responsible for over 14 breaches of the tenancy agreement. She has had to send the Tenant messages for issues including late rent; blocking access to others with her car; leaving items behind on the property; and issues with the use of the laundry machines.

The Landlord stated that the video camera footage has been very useful for Police and tenancy issues. The Landlord stated that she makes sure there is no noise after 7 pm that could bother the Tenant and stated words to the effect that she has is responsible to protect the other tenants quiet enjoyment rights.

Comply with the Act, Regulation, or Tenancy Agreement.

The Tenant stated that the Landlord does not honor the tenancy agreement or the Act. She stated that the Landlord charged her a move in fee of \$300.00. The Tenant stated that rental building does not have a strata council or strata fees and she should not have had to pay a move in fee.

The Tenant stated that water, electricity, and heat is included in the rent; however, the Landlord is seeking to increase her rent by 4% rather than 2%. The Tenant stated that there is not enough heat provided to common areas and in the month of June there was no heat in her unit. The Tenant stated that the Landlord suggested a space heater which she declined, and the Landlord turned the heat back on 11 days later. The

Tenant stated that she had a mould issue in her unit and there were people in and out of her unit dealing with the issue for weeks.

In reply, the Landlord stated that there is no building strata. She confirmed that the Tenant paid \$300.00 as a move in / move out cost.

The Landlord testified that the residential building was built in 1975 and has a hot water boiler for hot water heating to the units. The Landlord turns the boiler off in the summer months. The Landlord stated that she offered the Tenant a space heater and she said no. The Landlord stated that there was a cold period, so she turned the boiler back on for another week.

With regard to a rent increase, the Landlord stated that in addition to the monthly rent of \$1,650.00 the Tenant pays an additional \$275.00 each month for utilities. The Landlord referred to the tenancy agreement where the Landlord has provided additional information referring to the addendum for utilities. The addendum provides that the Tenant pays \$275.00 for utilities with the rent which includes water, hot water, gas, laundry, storage unit, recycling, garbage, and includes \$50.00 for electricity each month. If the electricity exceeds \$50.00 the tenant shall pay the difference. The addendum also provides that due to damage, extra cleaning, dust sheets, and setting up door codes and admin costs to monitor the door there will be a move in/ move out fee of \$300.00 for up to 3 hours of moving with additional time charged at \$35.00 per hour. The Landlord provided a copy of the tenancy agreement and addendum.

The Landlord stated that costs are going up and the tenancy agreement does not say that she can or cannot charge these terms of the amount charged to the Tenant.

The Landlord stated that she increased the Tenants rent by 2% which is an increase of \$33.00 per month. She stated that she is increasing the cost for storage from \$35.00 to \$56.00 and is increasing the amount for laundry from \$75.00 to \$96.00.

The Landlord stated that there was a water leak in the building that affected the kitchen area within the Tenant's rental unit and caused mold. The Landlord stated that the issue was dealt with within 2 days.

Analysis

Section 6(3)(a) of the Act provides that 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.*

Section 14 of the Act states that a tenancy agreement may not be amended to change or remove a standard term. A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. The requirement for an agreement does not apply to a rent increase in accordance with Part 3 of the Act.

Section 28 of the Act, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

Access to the Tenant or Guests.

Section 27(1) of the Act provides that 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.*

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 the Landlord has not terminated the Tenant's use of the laundry. It is premature for me to make a determination on the issue of termination. The Landlord has requested that the Tenant restrict her son's use of the laundry based on allegations of misuse of the laundry machines and poor behavior. The Tenant has continued to use the laundry facility and is free to use the laundry facility with no restrictions.

If the Landlord terminates the Tenant's use of the laundry facility, the Landlord must reduce the monthly rent in an amount equivalent to the reduction in value of the service.

The Tenant may apply for dispute resolution if the Tenant feels that there is no basis for the termination of the laundry facility, or that the Landlord has not reduced the rent by an amount equivalent to the loss of this service or facility. If the Tenant disputes the termination of the service or facility of laundry, an Arbitrator will determine whether providing the service or facility of laundry is a material term of the tenancy agreement and is essential to the Tenant's use of the rental unit as living accommodation and whether the Tenant can obtain a reasonable substitute for this service or facility.

The Tenant's request for an order for the Landlord to provide a service of facility is dismissed as I find that the Tenant has use of the laundry and as of the date of this hearing the Landlord has not terminated this service or facility.

Landlords Right of Entry

I find that the Landlord has every right to be on the residential property and in the common areas of the residential property because she manages the building 8 -12 hours per day including performing maintenance. There is no suggestion or evidence that the Landlord has entered the Tenant's unit without permission. I am not persuaded by the Tenant that the Landlord's actions of being on the residential property amounts to harassment of the Tenant.

The Tenants request to suspend or restrict the Landlord's right to be on the residential property or to enter residential units with proper written notice is dismissed.

Services or Facilities/ Quiet Peaceful Enjoyment

I have considered the Tenants testimony that she is facing constant badgering and threats from the Landlord and that the Landlord has threatened to evict her for cause.

The Landlord stated that the Tenant is responsible for over 14 breaches of the tenancy agreement and has had to send the Tenant messages for issues including late rent; blocking access to others with her car; leaving items behind on the property; and issues with the use of the laundry machines.

I have reviewed the tenancy agreement and addendum and I note that the addendum contains rules regarding blocking access; laundry for residents; wearing footwear; and abusive behavior. I acknowledge the Landlord's statement that she enforces the tenancy rules to protect the quiet enjoyment rights of all occupants of the residential property.

I find there is insufficient evidence provided from the Tenant to support that the Landlord is breaking a law with regard to using video cameras to monitor or record common areas of a residential property, or regarding the storage of this video footage. In addition there is insufficient evidence provided from the Tenant that the Landlord has broken a law by sharing personal information with others.

I am not persuaded by the Tenant that the Landlord has harassed her by sending her emails and texts regarding the rules on these above stated issues.

With regard to threats of eviction, the Landlord has not issued a notice to end tenancy to the Tenant. A landlord has a right under the Act to issue a notice to end tenancy to a tenant, and a tenant has a right under the Act to dispute a notice to end tenancy. I am unable to take pre-emptive action by restricting the Landlord's right to issue a notice to end tenancy.

I find that the Landlord has not breached the Act by failing to protect the Tenant right to quiet enjoyment. The Tenant's claim is dismissed.

Comply with the Act, Regulation, or Tenancy Agreement.

Section 7(1) of the *Residential Tenancy Regulation* provides that a landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;*
- (b) direct cost of additional keys or other access devices requested by the tenant;*
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;*
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;*
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;*
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;***
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.*

[my emphasis].

I find that the residential property does not have a strata corporation that has passed a legal rule requiring the payment of move in / move out fees. I find that the Landlord may not charge the Tenant the \$300.00 fee. Since the Landlord has collected this \$300.00 fee, if the Landlord has not already repaid this \$300.00 amount to the Tenant; the Tenant is authorized to deduct the amount of \$300.00 from one (1) future rent payment.

With regard to the rent increase, I find that the Landlord is permitted to increase the rent by \$33.00 which is a 2% increase.

With regard to the increase in utility costs, I find that the increase is not allowable. A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. A term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

As an example, the tenancy amendment provides that if the electricity costs exceed \$50.00 the Tenant shall pay the difference. The term does not clearly communicate the rights and obligations under it. There is no evidence before me on how the Landlord determines the cost of the electricity; if the calculation is based on the Tenants use of electricity or if the cost is based on the use by all the occupants of the residential property; or whether the Tenant is provided with an electricity bill that she may review and dispute.

With respect to storage and laundry, the rationale for my finding includes consideration that if the Landlord was permitted to change the amount of these fees, the Landlord could unilaterally raise the monthly utility fee to any amount. I find that permitting a Landlord to change a significant term of an agreement, such as raising the utility fees for storage and laundry to an arbitrary amount, would breach the tenancy agreement and would be unfair to the Tenant.

I find that based on the specific written terms of the tenancy agreement and addendum signed by the parties, the Landlord cannot unilaterally increase the utility fee. The utility fee remains at \$275.00 per month. If the Tenant has already paid an increase in the monthly utility fee, the Tenant may recover the overpayment amount by deducting the over payment amount from a future rent payment.

With respect to heating the residential property, based on the age and character of the building, I find it is reasonable for the Landlord to turn the hot water boiler off during the summer months. If the Tenant needs additional heating it is reasonable for the Landlord to provide a space heater. I find that the Landlord offered a space heater and the Tenant declined. I find that the Landlord has provided heat to the Tenant. I find that the Landlord has not breached the tenancy agreement or the Act with regard to providing heat.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful with some of her application, I order the Landlord to pay the \$100.00 fee that the Tenant paid for dispute resolution. The Tenant may deduct \$100.00 from one (1) future rent payment.

Conclusion

The Landlord has not issued an notice to end tenancy and I am unable to take pre-emptive action by restricting the Landlord's right to issue a notice to end tenancy.

The Landlord has not terminated the Tenant's use of laundry and I am unable to take pre-emptive action by restricting the Landlord's right under section 27(2) of the Act to terminate a service or facility after giving proper written notice and a reduction in rent.

The Tenant was partially successful with her application.

The Act does not permit the Landlord to charge the Tenant a move in/ out fee. The Tenant may deduct \$300.00 from one (1) future rent payment. The Landlord may not unilaterally change the terms and conditions of the tenancy agreement by increasing the fee charged for utilities. The utility fee remains at \$275.00 per month. The Tenant may deduct any overpayments she made from future rent payments.

Since the Tenant was successful with some of her claims, I order the Landlord to pay the \$100.00 fee that the Tenant paid for dispute resolution. The Tenant may deduct \$100.00 from one (1) future rent payment.

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: March 1, 2023

Residential Tenancy Branch