



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding TRONDHEIM HOLDINGS - C/O HOLLYWELL
PROPERTIES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PSF, OLC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) filed on February 13, 2022, seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act, for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and to recover the cost of the filing fee.

The tenant, the tenant's advocate (advocate), the landlord's agent (agent), and the landlord's legal counsel (counsel) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlord confirmed receipt of the tenant's application. Neither party raised an issue regarding the other's evidence and submissions.

I have reviewed all oral, written, and other evidence and submissions before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

These parties were recently in dispute resolution on the tenant's application for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, filed on April 25, 2022, and concluded on January 12, 2023. A final Decision was written by another arbitrator, on January 18, 2023.

The other arbitrator dismissed the tenant's application, without leave to reapply, finding that the tenant's rental unit included only the main suite and the laundry room on the premises.

As both parties submitted evidence involving the prior dispute and due to the landlord's argument that the issue relating to the tenant's request for access to the "pump house" was decided in the previous dispute, I find it reasonable and necessary that I review the previous dispute application materials and Decision.

I note that the pump room has also been referred to as a pump house, pumphouse and pumphroom.

Issue(s) to be Decided

Is the tenant entitled to the orders sought as noted above and recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on September 1, 2019, for a monthly rent of \$2,000 and a security deposit of \$1,000, being paid by the tenant to the landlord. Filed in evidence was a written tenancy agreement, signed by the landlord on August 12, 2019, and by the tenant on August 13, 2019.

In their application on the issue of a request requiring the landlord to provide for services and facilities, the tenant wrote as follows:

The Tenant has had unrestricted use of the "Pump House" since the beginning of her tenancy. The pump house controls the water supply for the entire rental unit, including the portion of the unit rented by the tenant and used for her business (a

dog salon). The pumphouse was recently locked by an unauthorized agent of the landlord without notification or explanation. The tenant has also served the pumphouse at her own expense as this has always been part of her tenancy but no stated explicitly.

[Reproduced as written]

The relevant part of the tenancy agreement is reproduced as follows:

b) **What is included in the rent:** *(Check only those that are included and provide additional information, if needed.)*
 The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

<input checked="" type="checkbox"/> Water	<input type="checkbox"/> Natural gas	<input checked="" type="checkbox"/> Garbage collection	<input checked="" type="checkbox"/> Refrigerator	<input type="checkbox"/> Carpets
<input type="checkbox"/> Cablevision	<input checked="" type="checkbox"/> Sewage disposal	<input type="checkbox"/> Recycling services	<input type="checkbox"/> Dishwasher	<input checked="" type="checkbox"/> Parking for 2 vehicles
<input type="checkbox"/> Electricity	<input type="checkbox"/> Snow removal	<input type="checkbox"/> Kitchen scrap collection	<input checked="" type="checkbox"/> Stove and oven	<input type="checkbox"/> Other: <input type="text"/>
<input type="checkbox"/> Internet	<input type="checkbox"/> Storage	<input type="checkbox"/> Laundry (coin-op)	<input type="checkbox"/> Window coverings	<input type="checkbox"/> Other: <input type="text"/>
<input type="checkbox"/> Heat	<input type="checkbox"/> Recreation facilities	<input type="checkbox"/> Free laundry	<input type="checkbox"/> Furniture	<input type="checkbox"/> Other: <input type="text"/>
<input type="checkbox"/> Additional information: <input type="text"/>				

The advocate stated that they are not disputing anything in the previous Decision, and that the tenant is seeking only access to the pump room, which is necessary for the tenant's dog grooming business. The advocate submitted that the tenant has had access to the pump room for the entire tenancy, and that now the room has been locked.

In the previous Decision and in this hearing, the pumproom was described as being in a separate, locked room containing the pump providing water to the entire property.

The advocate submitted that the tenancy agreement failed to specify that the pumphouse was restricted by the landlord, and in that regard, the advocate submitted a proposed amended written tenancy agreement for the parties to sign, in order to prevent more dispute resolution applications in the future.

In response to my inquiry, the tenant said that she stores her lawnmower, "weed whacker", and bulbs, but only wants access if something happens to the pump. It is noted that the tenant submitted photographs showing additional storage of a compressor, shovels, and ladder.

The tenant's evidence package included the following letter, dated February 5, 2023 to a purported agent of the landlord.

This morning I went to plug in my power for my business and [redacted] has locked the door in the little storage room next to my shop. Please know, this room was always been open for access for me and for [redacted], when she lived here.

It's very obvious that [redacted] is deliberately being very spiteful. So be it. But I would like to remove my equipment from that room.

I also would like to know, exactly who is the property manager here?

[Reproduced as written except for anonymizing personal information to protect privacy]

A further letter dated February 7, 2023 provided, in part

On Sunday, February 5th, 2023, I contacted [redacted] by text message informing her of the antagonistic behaviour of locking my pumphouse from me, by clearly, [redacted]

[Reproduced as written except for anonymizing personal information to protect privacy]

A letter of February 9, 2023, provides in part the following;

My recent letter to you on Monday, February 6th has still not been acknowledged. The pumphouse, which I have had serviced in the past, at my expense, and the door that has always been opened to me that houses my lawn equipment and compressor has still remained locked by [redacted] since Sunday, February 5th.

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenant's evidence also included selected highlighted excerpts from the previous Decision.

Landlord's response

Counsel submitted that there is no agreement on a settlement in this matter as the advocate was asked by the other arbitrator in the previous dispute if there were other

concerns and the advocate said there were not. Counsel submitted that their attempts at a settlement was their attempt to negotiate a better deal.

Counsel's written submissions included the following:

1. [redacted], the tenant, has filed a second notice of dispute resolution about the same issues, even though her first notice of dispute resolution, claiming that she rented the entire property, was not successful.
2. Instead of filing for judicial review to appeal the first decision, Ms. [redacted] has filed this notice of dispute which deals with same substantive issue – whether Ms. [redacted] tenancy includes more than the main floor suite and a laundry room.
3. The first notice of dispute asserted that Ms. [redacted] had rented the entire residence. That dispute was not decided in Ms. [redacted] favour, with the arbitrator deciding that Ms. [redacted] tenancy did not include the downstairs unit. Now, Ms. [redacted] is selectively litigating whether other pieces of the residence are included in her tenancy agreement, this time focusing on a utility room in the basement, referred to as the pump house.
4. The landlord asserts that this proceeding is an abuse of process. This Tribunal has already determined that Ms. [redacted] tenancy agreement did not include any part of the residence beyond the main floor suite and a laundry room, and should not be heard on the basis that it has already been decided against Ms. [redacted] without leave to reapply, under section 62(4)(c) of the Act.
5. The written decision regarding the tenant's first notice of dispute explicitly discusses the pump house, and notes that the tenant was told that the pump house (referred to as the "pump room") was not part of her tenancy and that the doors were to remain locked:

The agent [Ms. [redacted]] testified that in the conversation the tenant confirmed that she rented only the main floor and laundry room and not the lower suite. The agent testified that she told the tenant that the pump room is not hers and that the doors were to be locked.

The agent testified that the only portion of the property that the tenant has exclusive possession of is the main suite and the two carport parking spaces.

6. The tenant's agent, [REDACTED], was explicitly asked if he had "no further submissions other than those made in response to counsel's submissions", or reply submissions. Despite this confirmation, Mr. [REDACTED] has filed another notice of dispute on behalf of Ms. [REDACTED], litigator her access to portions of the residence beyond what is included in her tenancy agreement.
7. If this Tribunal disagrees that this matter was not already dealt with in the first hearing, and elects to hear this dispute, the Landlord asks that any decision make clear that Ms. [REDACTED] tenancy includes the main floor suite and a laundry room only. Otherwise, Ms. [REDACTED] will simply continue abusing this Tribunal's process by changing the language of what she is seeking in order to file additional notices of dispute and continue harassing her Landlord.

[Reproduced as written except for anonymizing personal information to protect privacy]

Counsel submitted that there was a time when the tenant was allowed temporary access to the pumproom to clean, but the tenant has now been using the pumproom for other purposes. Counsel submitted that there is nothing in the tenancy agreement giving the tenant access to the pumproom. The other arbitrator specifically found that the tenancy included the main suite and laundry room only.

Counsel submitted that the tenant should not have access to the pumproom as it provides for, and services water for the entire property, which includes a horse rescue facility. The water pump is a landlord responsibility and a tenant is not entitled to access a landlord's equipment room.

The agent testified that there was a time the tenant was allowed access, but not now. The agent explained that sediment occasionally collects so that the pump stops working, but that it has a circuit breaker which will automatically shut off the pump before any damage could occur.

Counsel submitted that the tenant's right to access the pumproom was stopped due to the tenant turning off the taps and disconnecting the hoses, causing a loss of water for the horses. In addition, the tenant has run an extension cord through insulation and down to the pumproom and has been asked to remove her belongings from the pumproom.

In the tenant's application on the issue of a request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, the tenant wrote as follows:

The Landlord has contracted with a Property Management company to act as his legal agent at the property. However, the Property Manager and the Landlord have allowed a neighbor who claims to lease part of the property to interfere with the tenancy of the Tenancy. The Tenant wants to prohibit this neighbor from having anything to do with her tenancy, her rental unit or interaction with the tenant. This has been an ongoing feature of this tenancy but needs to stop immediately.

[Reproduced as written]

The tenant submitted that the agent should not have anything to do with this tenancy and requests one point of contact for the landlord.

Counsel submitted the RTB has no authority to dictate to a landlord who they can appoint as an agent. Counsel also submitted that they were not entirely sure what the tenant was claiming, but suspected the tenant wanted the agent's access to the property surrounding the residence restricted. Counsel submitted they were not sure as the agent was not listed. Counsel submitted that there would be a breach of procedural fairness if the RTB continued with the dispute, as the landlord was entitled to know the claim against them.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The burden of proof is on the person making the claim. The standard of the burden of proof is on the balance of probabilities.

Issue 1-

As to the tenant's request for an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act, section 27 of the Act states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit and providing that service or facility is a material term of the tenancy agreement.

I find the evidence is clear that the tenant and landlord negotiated and agreed to the terms of a tenancy agreement, as indicated by the document itself. I also find it clear that a storage facility was not included in the written tenancy agreement, and as a result, I find the tenant submitted insufficient evidence that the landlord has breached the Act or the tenancy agreement.

As to the tenant's assertion that they are entitled to access to the pumproom, I do not find it is a tenant's right to be provided access to a landlord's equipment room. I find this expectation and request of the tenant is unreasonable.

Furthermore, I also find this matter has been considered and decided upon by the previous Decision referenced herein. While the tenant listed this request under a different issue in this dispute, I find the issue is the same. The tenant has sought access to an area on the property that is not included in her written tenancy agreement. From the tenant's own evidence, the tenant has variously referred to the pumproom as "my pumphouse" and "the little storage room".

It is abundantly clear that the other arbitrator found that the tenant's rental unit included only the main suite and the laundry room. Testimony was taken at the previous hearing regarding the pumproom. I therefore cannot re-decide what parts of the residential property to which the tenant is allowed access or control over. The tenant is reminded that they only have exclusive use and possession of the main suite and the laundry room.

For all the above reasons, I **dismiss** the tenant's application seeking an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act, **without leave to reapply**.

I find it appropriate to caution the tenant that repeated applications for the same issues could be considered an abuse of the process and could result in the landlord seeking appropriate action. The tenant's evidence included a quick succession of letters to a property management company within a short time prior to filing the current application regarding access to the pumproom, when the tenant knew at that time her rental unit was determined to include only the main suite and the laundry room. Additionally, it is noted that the matter of access to the pumproom was addressed in the previous Decision, the hearing for which began on August 25, 2022 and concluded on January 18, 2023.

I also note that if a tenant has a concern about, or becomes aware of, an equipment failure, it is the landlord's responsibility to deal with the malfunctioning equipment and the tenant should report the problem to the landlord. It is not the tenant's responsibility to make any repairs to the landlord's equipment or have the equipment serviced.

The parties are encouraged to cooperate with each other to arrange for a mutually agreeable time so that the tenant can remove her belongings stored in the pumproom.

Issue 2-

As to the tenant's an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, I agree with the landlord's counsel in that I am uncertain what relief is being sought. I find the request unclear and with no reference to what section of the Act, tenancy agreement, or regulations for which they request compliance.

The tenant testified at the previous hearing that the "agent's role at this time was that of a property manager acting on behalf of the landlord". Therefore, I find it clear that the tenant was aware that she was to contact the agent regarding landlord issues. I find it is a landlord's right to appoint someone of their choosing to act as agent for the landlord and a tenant has no right to interfere with how a landlord conducts their business.

Due to insufficient particulars of the claim, I **dismiss** the tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, **without leave to reapply**.

As I have dismissed the tenant's application on both issues listed, I **dismiss** the tenant's request to recovery of the cost of the filing fee, **without leave to reapply**.

I note that the tenant's evidence mentioned a purported monetary claim, however, that claim was not listed on the tenant's application and therefore, I find it was not an issue before me.

Conclusion

For all the above reasons, the tenant's application is dismissed without leave to reapply.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 11, 2023

Residential Tenancy Branch