



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding 1365602 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RR, RP, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to sections 27 and 65;
- An order for repairs to be made to the unit, site or property pursuant to section 32; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:20 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that he had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that he served the landlord with the Notice of Dispute Resolution Hearing package via registered mail on February 13, 2023. The tracking number for the mailing is recorded on the cover page of this decision.

The address the package was sent to is the address of the company listed as the registered records office on the company search the tenant had in front of him, dated August 2, 2022. The tenant read out the address and confirmed it as the one noted on the tenant’s application for dispute resolution. I am satisfied the landlord was effectively served with the tenant’s Notice of Dispute Resolution Hearing package on February 18, 2023, the fifth day after being sent via registered mail in accordance with sections 89 and 90 of the Act.

This hearing proceeded in the absence of the landlord pursuant to rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Should the landlord be ordered to perform repairs?

Is the tenant entitled to a reduction in rent for repairs, services or facilities agreed to but not provided?

Can the tenant recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on April 1, 2016 and included in the rent is a washer/dryer unit and a garburator.

The tenant testified that the washing machine stopped working on Saturday, December 3rd and the tenant notified the landlord via email on December 5, 2022. The washing machine does not spin to drain properly. The landlord responded on December 7th, indicating a plumber is coming the following Saturday, but no such plumber came.

On December 12th, the tenant sent another email to the landlord and in this email the tenant reminds the landlord about both the washing machine and a broken garburator. A third email is sent on December 30th and the landlord responds saying he will try and come the following day. On December 31st, no plumber comes and on January 2nd the landlord states he is hoping somebody will be there the next day. The tenant testified that the washing machine is still broken as is the garburator.

The tenant has been taking his laundry to a friend's residence in a city located 18 kilometers away and doing it there.

Analysis

The tenant alleges that by failing to repair the washing machine and the garburator, the landlord has terminated these services without reducing the rent by an appropriate amount.

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 22 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. Even if a service or facility is not essential to the tenant's use of the rental unit as living accommodation, provision of that service or facility may be a material term of the tenancy agreement. When considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement. It is entirely possible that the same term may be material in one agreement and not material in another.

...

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.

1. *whether it is a service or facility as set out in Section 1 of the Legislation;*
2. *whether the service or facility has been terminated or restricted;*
3. *whether the provision of the service or facility is a material term of the tenancy agreement;*
4. *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;*
5. *whether the landlord gave notice in the approved form; and*
6. *whether the rent reduction reflects the reduction in the value of the tenancy.*

The landlord did not attend this hearing to dispute any of the evidence supplied or the tenant's testimony. As such, I fully accept the tenant's testimony and evidence as the uncontroverted truth. Based on the evidence, I find:

1. section 1 of the Act defines both a laundry facility and garbage facility and related services as a "service or facility" when provided by a landlord to the tenant of a rental unit.

2. I find both the laundry and the garburator were terminated by the landlord when they stopped working and the landlord failed to repair them despite receiving multiple emails from the tenant.
3. I find that a working washing machine is a material term of the tenancy agreement as the tenant has been inconvenienced by having to take his laundry to a friend's place to do it.
4. I do not find the provision of the laundry or the garburator to be essential to the use of the rental unit as a living accommodation. However, these provisions were included in the tenancy agreement and were discontinued without equitable compensation.
5. The landlord did not provide any notice to the tenant that the provision of the laundry or the garburator facilities would be discontinued.
6. There has been no reduction in the rent offered by the landlord. I will determine the value of the lost facilities in this decision.

The tenant testified and provided emails showing he contacted the landlord on several occasions throughout December 2022 and January 2023 to advise the landlord that services he has paid for in his rent (washing machine and garburator) were not being provided because they were broken.

Based on the emails between the parties, and the undisputed testimony of the tenant, I find that the landlord promised to investigate and/or repair the washing machine and made no effort to do so. I find the landlord has failed in his obligation to repair and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant as required by section 32(1) of the Act.

Consequently, pursuant to section 62(3) of the Act, I order that the landlord repair or replace the tenant's washer/dryer unit within 15 days of being served with a copy of this decision by the tenant.

The landlord did not attend this hearing to dispute the tenant's testimony that the garburator has not worked since early December 2022 and that the landlord has not fixed it or replaced it. I order that the landlord repair or replace the garburator in the tenant's rental unit within 15 days of being served with a copy of this decision by the tenant.

Policy Guideline 22 states:

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.

If the tenancy agreement doesn't state who is responsible for any added service or facility, not provided by the tenant, after the commencement of the tenancy, and there is a cost involved in obtaining the service or facility, the landlord is responsible for the cost, unless the landlord has obtained the written agreement of the tenant to be responsible for the cost.

Where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent.

Where there is a termination or restriction of a service or facility due to the negligence of the landlord, and the tenant suffers damage or loss as a result of the negligence, an arbitrator may also find that the tenant is eligible for compensation for the damage or loss.

Section 65(1)(f) allows an arbitrator to order that past or future rent be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

The tenant provided evidence of a similar case where the tenant was awarded a \$50.00 per month reduction in rent for a loss of laundry facilities. In that case, it was a shared laundry facility and in the case before me, the rental unit had in-suite laundry facilities. In the example case and in the case before me, the tenants were both inconvenienced and had to go outside their living spaces to do laundry. I find that the inconvenience to the tenant in this case is similar to that of the example case and that the loss suffered by the tenant is on par with the example case. I find the tenant is eligible for compensation in the amount of \$50.00 per month from the time he first notified the landlord of the broken washing machine (December 2022) to the date of this hearing (June 2023). The tenant is awarded **\$300.00** pursuant to section 65 of the Act. [\$50.00 x 6 (months) = \$300.00]

The loss of the garburator, while not essential to the use of the rental unit as a living accommodation, is nonetheless noted in the tenancy agreement as a service paid for and not provided. The tenant seeks a reduction in rent as \$10.00 per month, however provided no reasoning for this figure. I find a reduction in the amount of \$5.00 per month to be more in line with the lesser affect the loss of the garburator has in the quality of the tenant's enjoyment of the rental unit. For the broken garburator from early December 2022 to June 2023, I award the tenant **\$30.00** pursuant to section 65 of the Act. [\$5.00 x 6 (months) = \$30.00]

Pursuant to section 65(1)(f), I order that the tenant's rent be reduced by **\$55.00 per month** until such time that the laundry facility and the garburator are fully functional by being repaired or replaced.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Item	Amount
Loss of laundry facility (6 months)	\$300.00
Loss of garburator (6 months)	\$30.00
Filing fee	\$100.00
TOTAL	\$430.00

In accordance with the offsetting provision of section 72, the tenant may reduce a single payment of rent due to the landlord by \$430.00.

Conclusion

I order that the landlord repair or replace the tenant's washer/dryer unit within 15 days of being served with a copy of this decision by the tenant pursuant to section 62(3) of the Act.

The tenant may reduce a single payment of rent due to the landlord by **\$430.00** pursuant to section 72.

I order that the tenant's rent be reduced by **\$55.00 per month** until such time that the laundry facility and the garburator are fully functional by being repaired or replaced pursuant to section 65(1)(f).

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: June 06, 2023

Residential Tenancy Branch