



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes PSF, LRE, OLC, FFT

Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") for:

- an order that the Landlord provide services or facilities required by law pursuant to section 27;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to section 70(1);
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Landlord did not attend this hearing. I left the teleconference hearing connection open until 10:05 am in order to enable the Landlord to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code (referenced on the cover page of this decision) had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Tenant and I were the only ones who had called into the hearing.

Preliminary Matter – Service of Dispute Resolution Documents

The Tenant confirmed that the notice of dispute resolution proceeding package and the Tenant's documentary evidence (collectively, the "NDRP Package") were sent to the Landlord via registered mail on January 19, 2023. The Tenant submitted a registered mail tracking number in support of service (referenced on the cover page of this

decision). Tracking records indicate that the package was delivered on January 23, 2023. Based on the foregoing, I find the Landlord was served with the NDRP package in accordance with sections 88 and 89 of the Act on January 23, 2023.

Having found the Landlord to be duly served with notice of this hearing, I directed this hearing to proceed in the Landlord's absence.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord provide services or facilities required by law?
2. Is the Tenant entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?
3. Is the Tenant entitled to an order that the Landlord comply with the Act, the regulations, or tenancy agreement?
4. Is the Tenant entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is a camper owned by the Landlord. This tenancy commenced on August 11, 2020 and is month-to-month. Rent is \$550.00 due on the fifteenth day of each month. The Tenant paid a security deposit of \$275.00.

The tenancy agreement states that "electric, water, sewer, trash" are included. According to the Tenant, the utilities were in the name of a tenant living in a house on the same property. The Tenant indicated that she agreed to pay the other tenant \$20.00 per month for electricity. The Tenant stated that one winter, the bills became too high, and since then the Landlord has been harassing the Tenant about electric. The Tenant explained that the Landlord asked the Tenant to pay rent of \$650.00 per month. Subsequently, the Landlord asked the Tenant to use propane for heating rather than electricity, which the Landlord would purchase. The Tenant stated that she agreed to try it, but the Landlord left the propane empty for two to three weeks without refilling it. The Tenant stated that she is happy to continue using electric if the Landlord is not

supplying the propane. The Tenant indicated that last summer, the Landlord installed a separate power line, the Landlord is now paying for electric costs, and the Tenant is paying the Landlord directly. The Tenant submitted that she does not want the Landlord to harass her for more money due to the cost of electricity.

According to the Tenant, the Landlord accused her of leaking propane and asked the Tenant to sign a letter indicating that the Landlord had no responsibility and the Tenant had no rights. The Tenant stated that the Landlord wanted her to sign the letter on December 20, 2022 (the "Letter"). The Tenant submitted a copy of the Letter into evidence, which states as follows (portions redacted for privacy):

Renting the fifth wheel. To [Tenant]. You know that fifth wheel No
permit No insurance, No liability,
Your own responsibility in the future only renting temporary and if you not
Happy you find another place. I helping to you its not my responsibility.
Thanks

[Landlord]

The Tenant stated that the parties stopped talking in winter, but previously the Landlord would bother her on a weekly or bi-weekly basis.

In addition, the Tenant stated that her water comes through the main tenant's house. The Tenant submitted that this water is direct mountain runoff. The Tenant stated she was told that this was good water when moving in, but has never seen a water quality report. The Tenant indicated that other residents in the area have switched to water installed by the district. The Tenant stated that the Landlord refused to provide a water quality test, so she is using the water for washing only and is hauling drinking water from the city. The Tenant stated that she has written to the Landlord and to the district about the water issue. According to email correspondence submitted by the Tenant, the district suggested purchasing a water testing kit from Exova. The Tenant also submitted pictures of her water supply into evidence.

The Tenant seeks orders for the Landlord to comply with the Act, the regulations, or the tenancy agreement as follows:

- that the Landlord supply utilities unencumbered as per the parties' tenancy agreement, to not interfere with utilities included in the rent, and to not to demand more money than agreed upon;

- that the Landlord provide regular water quality tests for potability, or for the Landlord to reimburse the costs for the Tenant to do such tests through a deduction from rent;
- that the Landlord refrain from harassing the Tenant and to not interfere with the Tenant's quiet enjoyment; and
- that the Landlord refrain from pressuring the Tenant to sign peculiar agreements, including the Letter.

The Tenant also seeks orders that the Landlord provide services or facilities required by the tenancy agreement or law, and to suspend or set conditions on the Landlord's right to enter the rental unit.

The Tenant stated that according to another tenant on the property, the Landlord had opened the rental unit while she was gone. The Tenant indicated that the Landlord threatened to pull the camper out or tear it down.

Analysis

1. Is the Tenant entitled to an order that the Landlord provide services or facilities required by law?

Pursuant to section 27(1) of the Act, a landlord must not terminate or restrict a 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.

Based on the evidence presented, I find the Tenant has access to electricity and electric heating at the rental unit. I do not find it to be a material term of the parties' tenancy agreement that the Landlord provide propane for heat, since electric heating is also available. I accept that the parties tried switching to propane to reduce costs. I find that the Tenant can still use electricity for heating if the propane supplied by the Landlord is insufficient. As such, I do not find the Landlord to have terminated or restricted an essential or material service or facility at this time. The Tenant's claim under this part is dismissed without leave to re-apply.

2. Is the Tenant entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?

A landlord must not enter a rental unit except in one of the circumstances described under section 29(1) of the Act. These circumstances include, among others, when:

- the tenant gives permission at the time of entry, or
- at least 24 hours and not more than 30 days before the entry, the landlord gives a written notice that includes the purpose for entering, which must be reasonable, and the date and time of the entry, which must be between 8 am and 9 pm unless the tenant otherwise agrees.

Under section 70(1) of the Act, the director may, by order, suspend or set conditions on a landlord's right to enter a rental unit under section 29 of the Act.

In this case, I do not find the evidence to indicate that the Landlord has entered or attempted to enter the rental unit contrary to the requirements of section 29 of the Act. Accordingly, I dismiss the Tenant's claim under this part without leave to re-apply.

3. Is the Tenant entitled to an order that the Landlord comply with the Act, the regulations, or tenancy agreement?

Pursuant to section 62(3) of the Act, the director may make an order necessary to give effect to the rights, obligations, and prohibitions under this Act, including an order that a landlord or tenant comply with the Act, the regulations, or the tenancy agreement.

The Tenant seeks orders regarding (a) provision of utilities, (b) water quality tests, (c) quiet enjoyment, and (d) signing the Letter. I will discuss each item below.

a. Utilities

Based on the tenancy agreement submitted, I find electricity was included in the rent. I find the parties subsequently agreed for the Tenant to pay the Landlord an additional \$20.00 per month for electricity. I accept the Tenant's undisputed testimony that the Landlord has been bothering the Tenant about the cost of electricity and has sought to increase the rent.

Therefore, pursuant to section 62(3) of the Act, I order the Landlord to comply with the parties' tenancy agreement by not increasing the rent or adding charges for the cost of

electricity, except as otherwise agreed upon by the parties or permitted under the Act and regulations.

b. Water Potability

I find potable water is a service or facility that is essential to the Tenant's use of the rental unit as living accommodation. I find the Landlord must not terminate or restrict such a service or facility under section 27(1) of the Act.

Furthermore, under section 32(1) of the Act, a landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find the Landlord's obligation to maintain the rental unit and the residential property, so that it is suitable for occupation by the Tenant, includes ensuring that the water supply is potable. I find this includes an obligation to test the water supply as is reasonable in the circumstances.

I accept the Tenant's undisputed testimony that the water source for the rental unit is mountain runoff and that the Landlord has not provided any water potability testing results for the duration of the tenancy.

Therefore, I am not satisfied that the Landlord has complied with the Landlord's obligation to maintain the rental unit and residential property as required under section 32(1) of the Act.

Pursuant to section 62(3) of the Act, I order the Landlord to test the potability of the water supply to the rental unit and provide a copy of the results to the Tenant within thirty (30) days of the date of this decision. If the Landlord fails to comply with this order, the Tenant may purchase a water testing kit from Exova and deduct the cost from rent payable to the Landlord pursuant to section 65(1)(b) of the Act.

Depending on the test result, the Tenant is at liberty to apply for further orders or relief with respect to the rental unit's water supply.

c. Quiet Enjoyment

Under section 28 of the Act, 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 of the Act; and
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I accept the Tenant's undisputed testimony that the Landlord threatened to remove or tear down the rental unit. Pursuant to section 63(2) of the Act, I order the Landlord to comply with section 28 of the Act by respecting the Tenant's quiet enjoyment, which includes freedom from unreasonable disturbance and exclusive possession of the rental unit subject to the Landlord's right to enter in accordance with the Act.

d. Letter

Pursuant to section 14(2) of the Act, a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and the tenant agree to the amendment.

I find the Tenant is not under any obligation to sign any further agreement or amendment with the Landlord, including an acknowledgement of liability such as the Letter. However, having made this finding, I do not consider it necessary to issue any orders under section 62(3) of the Act.

4. Is the Tenant entitled to reimbursement of the filing fee?

The Tenant has been partially successful in this application. I grant the Tenant reimbursement of her filing fee under section 72(1) of the Act. Pursuant to section 72(2)(a), I authorize the Tenant to deduct \$100.00 from July 2023 rent payable to the Landlord in full satisfaction of the filing fee awarded.

Conclusion

Pursuant to section 62(3) of the Act, I order:

1. the Landlord to comply with the parties' tenancy agreement by not increasing the rent or adding further charges for the cost of electricity, except as otherwise agreed upon by the parties or permitted under the Act and regulations;
2. the Landlord to comply with section 28 of the Act by respecting the Tenant's right to quiet enjoyment; and
3. the Landlord to test the potability of the water supply to the rental unit and provide a copy of the results to the Tenant within **thirty (30) days** of the date of this decision.

If the Landlord fails to test the water supply as required above, the Tenant may purchase a water testing kit from Exova and deduct the cost from rent payable to the Landlord pursuant to section 65(1)(b) of the Act.

The Tenant's claim for reimbursement of the filing fee is granted. Pursuant to section 72(2)(a) of the Act, the Tenant is authorized to withhold a one-time amount of **\$100.00** from July 2023 rent.

The Tenant's claims for the Landlord to provide services or facilities required by the tenancy agreement or law and to suspend or set conditions on the Landlord's right to enter the rental unit are dismissed without leave to re-apply.

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 05, 2023

Residential Tenancy Branch