Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding CENTURY 21 EXECUTIVES REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes PSF, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order that the landlord provide services or facilities required by the tenancy agreement or the law, and to recover the filing fee from the landlord for the cost of the application.

An agent for the tenant and an agent for the landlord attended the hearing, as well as a person introduced as the owner of the rental unit. Each gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established that the landlord should be ordered to provide services or facilities required by the tenancy agreement or the law?

Background and Evidence

The tenant's agent is the tenant's daughter-in-law, who testified that this fixed-term tenancy began on July 1, 2014 and reverted to a month-to-month tenancy after July 1, 2015 and the tenant still resides in the rental unit. The tenant moved in earlier and paid a pro-rated amount of rent for the first partial month of the tenancy. Rent in the amount of $1,995.00 was payable on the 1st day of each month, and the tenant's agent is not aware of any rental arrears. On May 7, 2014 the landlord collected a security deposit from the tenant in the amount of $997.50 which is still held in trust by the landlord, and

no pet damage deposit was collected. The rental unit is a condominium apartment in a strata building.

Copies of tenancy agreements have been provided as evidence for this hearing by both parties:

- The first is for a fixed term commencing on July 1, 2014 expiring on July 1, 2015 for rent in the amount of $1,995.00 payable on the 1st day of each month. It also states, “Facility Fee is now included in rent.” It names the landlord as a property management company (CMPML) and is signed by a landlord for the property management company.
- The second is a month-to-month tenancy commencing September 1, 2016 for rent in the amount of $1,995.00 payable on the 1st day of each month. It names the landlord as a Property Management Company (RMCS).
- Another tenancy agreement has been provided by the tenant for a month-to-month tenancy commencing July 1, 2021 for rent in the amount of $2,030.00 payable on the 1st day of each month, but is not signed by either party. It names the landlord as another property management company (C21ERL).

The tenant has also provided a copy of a Notice of Rent Increase, which increases the rent by $40.00 per month from $2,060.00 to $2,100.00 per month commencing on November 1, 2023. The tenant’s agent testified that the tenant has dementia, and currently pays $2,060.00 per month.

The tenant’s agent further testified that 10 years ago the tenant signed the lease which included all facilities, such as access to common areas, fitness room, games room, and library, which is why this unit was selected. Rent was based on what the tenant could afford. The property was managed by a company, but it was not clear who owned the unit. Nothing in the lease indicated anything about that.

The property manager changed, and the tenant and tenant’s agent were assured that everything remained the same. That was on September 1, 2016, which was just a change of the property manager or property management company and the tenant stopped giving rent cheques to the previous property management company, and started paying the new property management company.

The tenant received a notice from the first property management company (CM) that facilities fees were not being paid by the landlord, who had multiple units and was no longer paying for the facilities. The manager at the CM allowed the tenant to use the facilities until it was resolved. A copy of a Notice from CM has been provided for this

hearing dated February 28, 2022. It is addressed to “Residents of Suites Owned by DWRHL” indicating that CM had been advised by the landlord, DWRHL that the landlord no longer wanted to participate in the Facilities Agreement for the unit that the tenants occupy effective February 1, 2022 and states that all services and access will be provided without interruption for the month of March, 2022.

The tenant received a notice from CM dated July 9, 2022 explaining that the name of the Facilities Agreement had been changed to Lifestyle Agreement. It states that in November, 2021 the tenant’s landlord (DWRHL) terminated all CM services, and that all attempts to reach an agreement with the landlord have failed and the tenant would no longer continue to be provided the services while the landlord is not paying for the services. It offers a separate agreement with the tenant for a monthly fee of $342.95 plus GST.

A legal battle was going on behind the scenes between CMPML and the condominium owner. When the tenant filed this dispute, the tenant received a letter from a lawyer in July, 2022 saying that the owner (DWRHL) would continue to pay facility fees under protest, then suddenly that stopped earlier this year, without notice. Then another letter arrived from the facilities provider saying fees had not been paid since March, 2023, and the tenant had no notice of that. The fees were $350.00 per month, plus GST. On January 1, 2024, the fees increased to $395.00 per month. The facilities include the dining room, fitness room, games room, library, walking path throughout property, shuttle bus, fitness classes or movie night or a walking group organized.

The tenant never signed a separate agreement with the facilities provider, refusing because it’s contained in the original lease. Neither the tenant nor the tenant’s agent have ever asked for help with the tenant’s care. The tenant pays for those services and have nothing to do with the tenant’s lease. The tenant’s agent does not know why that is included in the landlord’s evidentiary documents. It is not reasonable that the tenant would have to understand complicated legal docs. Leases have the same unit owned by the same people, but managed by different people. A complex legal battle is not the tenant’s problem, or what the landlord’s relationship is with the facilities provider. It amounts to a substantial rent increase.

When the tenant and the tenant’s agent first saw the rental home, the property manager gave a full tour of all facilities, and were given a choice of 5 units that were available. Meals and housekeeping and hairdressing were not included. There is no Addendum to the tenancy agreement, but the tenant had a full tour and has always been able to access the facilities. The tenant has several contracts for meals, bathing, dressing,

cleaning and meals when the tenant chooses, which are paid for separately, including meals provided by CM.

The first agent of the landlord (GM) testified that the original tenancy agreement signed in 2014 was signed by CSPML, and the current landlord, DWRHL was not involved. The landlord (DWRHL) was the tenant and CSPML had a sublease from 2012 to 2015, and payment for all units that DWRHL owned was paid by CMPML. The landlord's agent was hired as a property manager because payments were not being made by DWRHL for a year.

After a Court Judgment, a new property manager was appointed in 2016, which was the landlord's agent (GM). A new tenancy agreement was signed in September, 2016, but DWRHL was not made aware of what was included in any facility fee. The holding company would have paid strata fees, but anything other than common areas was between the tenant and the facilities provider.

The landlord never had any agreement knowing what was made available. The landlord was providing an apartment, and that's all. A copy of an email from CSPML has been provided for this hearing, stating that the facilities provider would now be following the facility agreement and have tenants sign it, and that collection would start.

The current Court case is only relevant because CSPML will do anything to get tenants to pay for things that the landlord has no control of. The landlord's agent knew that the original facility fee was included in the rent, but is not privy of what was included. The landlord's agent had no control over it as a landlord, and had no idea what the value would be or what the fees were.

The second agent of the landlord (BR) testified that the owner of CSPML said under oath in the Supreme Court hearing that there were no facilities included in the original lease between CSPML and the tenant. The building is mixed residential and commercial. The tenant is allowed in all common areas, and CSPML provided facilities for years. The landlord never paid anything for those, or signed an agreement.

To order a dinner, a person must pay a fee, and the tenant was paying every month, and would not have been able to do so until the tenant made the agreement.

The landlord is not the provider of the facilities. The owner of CSPML is the facilities provider and changes things as he likes and the landlord can't do anything about it.

Analysis

The *Residential Tenancy Act* does not permit a landlord to arbitrarily cancel services or facilities, but must give a tenant at least 30 days notice to remove a service or facility and reduce rent accordingly.

I have reviewed all of the evidence of the parties.

The owner (DWRHL) was the landlord of CMPML and the 2 companies entered into a tenancy agreement for 3 years commencing August 1, 2012 and ending on July 31, 2015 to sublet the rental unit. The tenant entered into a sub-tenancy agreement with the tenant (CMPML) commencing on July 1, 2014 which was to revert to a month-to-month tenancy after July 1, 2015. I find that there is no contractual relationship between the original landlord and the sub-tenant.

Where a tenant rents rental units for the purpose of subletting, the tenant becomes the tenant of the sub-landlord, which is what happened in this case.

The *Residential Tenancy Act* also specifies how a tenancy ends, and I find that the first tenancy agreement ended on July 31, 2015 under Sections 44 (1)(g):

> **44** (1) A tenancy ends only if one or more of the following applies:
>
> (g) the tenancy agreement is a sublease agreement.

The sub-landlord erred in law by agreeing with the sub-tenant to a month-to-month tenancy after July 31, 2015. However, that month-to-month tenancy only lasted 1 month and the tenant was never asked to move out of the rental unit, and the tenant continued to pay rent.

However, the owner retained another property management company (RMCS), who entered into a tenancy agreement with the tenant named in this dispute for a month-to-moth tenancy beginning on September 1, 2016 for the same rental unit.

I accept that the facilities provider (CM) did not have a contract with the landlord (DWRHL), but the facilities were available to the tenant, as indicated in the first tenancy agreement. I also accept the undisputed testimony of the tenant's agent that the tenant was assured by that property manager that the facilities would continue to be provided.

The landlord retained the services of another property management company (C21ERL), who entered into another month-to-month tenancy agreement with the tenant commencing July 1, 2021 for the same rental unit.

Section 1 of the *Residential Tenancy Act* defines a landlord as:

> **"landlord",** in relation to a rental unit, includes any of the following:
>
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
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> (i) permits occupation of the rental unit under a tenancy agreement, or
>
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
>
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
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> (c) a person, other than a tenant occupying the rental unit, who
>
> (i) is entitled to possession of the rental unit, and
>
> (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
>
> (d) a former landlord, when the context requires this.

Also, the property management team changed from time-to-time, which is not unusual, but the tenancy agreement goes with the transfer of property managers. Nothing changed with respect to the facilities with the change of property management companies.

I have also considered the Summary and Amended Summary provided by the landlord. It shows that the landlord (CMPML) leased the property from the owner in 2012 to sublet. It also states that the owner (DWRHL) was not aware that CMPML was providing facilities, nor did the owner (DWRHL) ever sign any facilities fees agreement. It was up to CMPML to bill subtenants monthly for services. The Summaries also state that the owner (DWRHL) assumed that CMPML had done so, and CMPML continued to provide the services, and that this dispute is between the tenant and CMPML. I disagree; the tenant of the owner had no legal right to bill sub-tenants monthly for services that were included in the rent.

It is not for me to decide whether or not the landlord, or owner had a valid contract with the facilities provider, but it is for me to decide whether or not the landlord has removed a service or facility without giving the tenant at least 30 days notice and reduce rent

accordingly. In other words, the agreement, or lack thereof between the owner and the facilities provider is not the tenant's problem. I find that the facilities were provided at the beginning of the tenancy, continued in the month-to-month tenancy commencing September 1, 2016, and there is nothing in evidence that removes any of the facilities in accordance with the *Residential Tenancy Act.*

The evidence also shows that the owner DWRHL didn't stop paying the fee until May, 2023.

I understand the landlord's position; that the landlord, or owner, did not sign a Facilities Agreement with the facilities provider and did not know what facilities had been provided to the tenant with the first or second or third tenancy agreement. However, having found that the tenant was assured that everything was the same when the second tenancy agreement was signed, and that the services and facilities continued throughout the tenancy beyond the date that the third tenancy agreement was signed, the tenant has established the claim.

In the evidence I find that the tenant is entitled to the same services and facilities, and I order the landlord to provide same, or give 30 days notice to remove a service or facility and reduce rent accordingly, in accordance with Section 27 of the *Act.*

Since the tenant has been successful with the application the tenant is also entitled to recover the $100.00 filing fee from the landlord. I grant a monetary order in favour of the tenant in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may serve the order on the landlord and file it in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I order the landlord to provide the same services and facilities that were afforded to the tenant or provide the tenant with no less than 30 days notice of removal of the facility or service and reduce rent accordingly.

I further grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $100.00, and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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 18, 2024

Residential Tenancy Branch