Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Home Front Evangelism
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PSF, RP, LRE, AAT, OLC, RR, MNDCT, FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking several orders against the landlord including a rent reduction and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, his witness and two agents for the landlord.

Neither party raised any significant issues related to the service of hearing documents or evidence. Both parties were prepared to and did participate fully in this hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to make repairs; an order to have the landlord provide services or facilities agreed upon and/or required by law; an order to restrict the landlord's access to the rental unit; an order to allow the tenant's guests access to the rental unit without restriction from the landlord; to a rent reduction; to a monetary order for compensation; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 29, 30, 32, 65, 67, 70 and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on May 29, 2020, for a month-to-month tenancy beginning on June 1, 2020 for a monthly rent of $850.00 due on the 1st of each month with a security deposit of $425.00 paid. The tenancy agreement contains a number of clauses relevant to the tenant's Application and I reproduce those clauses here:

- The tenant agrees that the room is rented as is and appliances; fridge, stove, washer, dryer, internet and garbage removal are provided for their use. It is the renter's responsibility to keep his room tidy and clean as well as understands that

the kitchen is a common area and therefore needs to be clean at all times. The kitchen is also understood that it could be use for [the landlord] events as well.

- The owners must have access to the tenant's room and the following stipulations are: a) the owners must agree to the time of day b) the owners may enter if an emergency condition to protect life or property c) the owners may enter if the tenant has abandoned the rented room d) the owners may inspect the rented room on occasion.
- The driveway will be used for one vehicle only and the gate must be closed and locked every evening.
- It is hereby agreed upon that there will be no smoking or drinking (parties) on the property, no pets and the tenant will respect the nature of the property being owned by a charitable organization, therefore Sunday being a rest day.

The tenant seeks to have the landlord disable and remove a camera set up in the kitchen. While the tenant acknowledges that he had been sharing the kitchen with another occupant of the property their position is that the kitchen is not common area and references a previous decision dated November 19, 2021 (file number listed on the coversheet of this decision). The relevant portion of that decision states:

> "I am not satisfied section 4 of the Act applies in this matter for the following reasons. The Landlord does not live at the same building as the Tenant. The Landlord has not used the kitchen at the building recently. The parties gave conflicting testimony about whether the Landlord has used the kitchen since 2017. I do not find that there is compelling evidence before me showing the Landlord has used the kitchen on any regular basis since 2017. I acknowledge that there is documentary evidence referring to the kitchen as common space; however, I am not satisfied based on the documentary evidence that the Landlord in fact uses the kitchen for their own purposes on any regular basis."

The tenant submits that the landlord has restricted his guest and specifically notes a time when a friend was over for lunch where one of the landlord's other agents told the friend they must leave. The tenant submitted that it was explained to him that the guest had brought dogs into the property, which was not allowed.

The tenant submitted that as of October 17, 2021, the landlord has not allowed parking on the property and locked the gates at the front of the building thus restricting the tenant's ability to park and have guests attend the property.

He also submitted that as of the same date, the landlord had removed kitchen equipment, including: the stoves; microwaves; kettles; the washer and dryer; and cabinet doors. The tenant submitted that he has been using a hotplate and toaster oven to prepare food.

The tenant also stated the landlord has entered his room; has turned off the power and hot water and painted "blood red" point over the doors in the residential property.

The landlord's position is that the kitchen is common area, pursuant to the tenancy agreement. As such, the landlord does not feel they have to remove the cameras which are in place for security purposes.

The landlord submitted that when the walls had been painted, they lost the labelling of the breakers and they had to have the panels re-identified and as such it cause a temporary disruption in electrical services.

The landlord acknowledged that when they were responding to another tenant's "deficiency" list they determined that all of the kitchen appliances required replacement as they are over 40 years old and that the cabinetry required repairs.

As a result, the landlord confirmed, the appliances and furniture had been removed from the kitchen area. The landlord submitted that as a result of supply chain issues due to Covid 19 they have difficulty in ordering and obtaining replacement appliances. However, the landlord was concerned about safety to the property, in particular in regard to the stoves. At the time of the hearing, the landlord confirmed that they had not yet ordered replacement stoves. The parties agreed that by March 19, 2022, the landlord put in a new floor; new dishwasher and a new washer and dryer.

The tenant seeks compensation in the form of rent reductions both past and future in the amount of $100.00 per week for the period of time that he has not had the services and facilities and orders to have the landlord reinstate the services that have been removed, including the kitchen appliances and furniture, as well as parking.

Analysis

Before I adjudicate the tenant's claim, I address a written submission from the landlords. While it is not clear if the landlord's served this letter to the tenant as part of the evidence package, I still need to address the content.

The written submission is dated March 8, 2022 and comes in the form of a letter written to the attention of the "Residential Tenancy Board". Some of the points made in this letter directly respond to the tenant's claims but a portion of it does ask that I consider the fact that the landlord "is a charitable organization that relies solely upon funds from the community and donors to keep this organization running".

While I can certainly empathize with the circumstances of limited funds available to a charitable organization, the *Act* does not allow me to take into consideration anything more than the rights and obligations, granted under the *Act*, of both parties to a tenancy. As such, I cannot take the landlord's financial circumstances into consideration.

I note that when one party to a tenancy file an Application for Dispute Resolution seeking to obtain orders to compel a party to comply with the Act, regulation, or tenancy

agreement and for compensation, the burden rests with the party making the claim to establish they have grounds for the orders and compensation. In the case before, I find the tenant has that burden.

Section 1 of the *Act* defines "common space" as any part of the residential property the use of which is shared by tenants, or by a landlord and one or more tenants.

While I acknowledge that the tenant did not serve the landlord with the previous decision (noted on the coversheet of this decision), I advised the parties during the hearing that I must review that decision to determine if the issue of "common space" had been determined in that decision. Upon that review, I find that the arbitrator in that decision did not determine if the kitchen was common space.

The findings made by the arbitrator, in the November 19, 2021 decision, were to determine whether or not this tenancy fell within the jurisdiction of the *Act*. In order to determine that issue she assessed whether or not the landlord shared use of the kitchen facilities or not.

She found that there was insufficient evidence to determine if the landlord shared the kitchen with the tenants. If she had found that they did; she would have declined to accept jurisdiction. She did not address whether or not the tenant shared the kitchen facilities with another tenant. However, in the hearing that is the subject of this decision, the tenant confirmed that he had been sharing the kitchen with other occupants who have resided in other rooms rented from the landlord.

As such, I find that the kitchen is shared with other tenants, when there are other tenants residing on the residential property. Therefore, I also find the kitchen is common area and the landlord is allowed to treat the kitchen as such. As to the use of cameras in common areas, I defer the requirements set forth by the Office of the Information and Privacy Commissioner for BC (OIPC).

As the tenant had not provided, into evidence, any of the stipulations that OIPC has regarding the use of surveillance cameras in common areas of residential properties, I dismiss the portion of the tenant's Application seeking to have the landlord deactivate the camera in the kitchen.

Section 29(1) of the *Act* states a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
    (i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit; or

(f) an emergency exists and the entry is necessary to protect life or property.

Section 29(2) states a landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

While the bulk of the tenant's Application seeking an order to have the landlord restricted from accessing the rental unit rests on the tenant's misunderstanding of the determination that the kitchen is common space and they have provided little testimony and/or evidence of other intrusions into the tenant's rental unit, I declined to issue any order to the landlord to comply with Section 29. However, I advise both the tenant and the landlord that they are bound by the specific outlined in Section 29, over and above anything written in the tenancy agreement. In addition, where there are differences between what the tenancy agreement states and what Section 29 states, Section 29 prevails.

Section 30 of the *Act* stipulates that a landlord must not unreasonably restrict access to residential property by the tenant or a person permitted on the residential property by that tenant. I also note that one of the clauses in the tenancy agreement stipulates that no pets are allowed.

In the case before me, I find that the landlord did have the right to inform the tenant and by extension their guest that the dogs they brought with them to lunch were not allowed on the property, pursuant to the tenancy agreement, the landlord did not have the right to insist that the guest leave the property.

However, I will not issue to the landlord any order on this point, as the tenant has provided only one such occurrence and I believe the concern was raised, at least in part, over the tenant's mistaken understanding of the common area issue.

I do caution the tenant, however, that because the tenancy agreement contains a clause against having pets on the residential property, the condition applies to any guests he allows to visit him on the residential property and is rental unit.

Section 27(1) of the *Act* states, 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.

Section 27(2) states 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 8 states that to determine the materiality of a term during a dispute resolution hearing, I must focus on the importance of the term in the overall schemed of the tenancy agreement, as opposed to the consequences of the breach.

Based on the testimony of both parties and the terms of the tenancy agreement, I find that the provision of appliances such as stoves and washer and dryers is a material term of the tenancy agreement. I make this finding on the basis that renting a rental unit that does not allow for a tenant to cook meals and complete laundry are important considerations when renting a home and if originally provided, must be maintained. As such, the landlord is not allowed to simply stop providing these facilities.

As a result, and in consideration that the tenant has confirmed the washer and dryer have been replaced, I order the landlord to reinstall some form of stove immediately. If the landlord still wishes to wait for replacements stoves that are in line with what they have removed they may do so, but until such time as they do, they must provide the tenant with a temporary equivalent of a stove.

However, I find that the provision of parking is not a material term of the tenancy agreement. As such, pursuant the landlord is allowed to end the provision of parking with 30 days written notice and corresponding reduction in rent.

While the landlord has already stopped providing parking to the tenant, I find it would be redundant to order the landlord now to provide a written notice of ending the provision of parking, as such, I do not make that order.

I will, however, order that the landlord must reduce the rent for the duration of the tenancy or until the landlord reinstates the provision of parking. Based on the total amount of rent per month, I find that $30.00 per month is a reasonable amount to reduce the value of the tenancy by for the landlord’s termination of parking.

As to the tenant’s claim for other rent reductions relating to privacy (camera issue); the restriction in the use of the kitchen and laundry facilities, I make the following findings. Since I have found that the landlord cannot restrict or terminate the laundry and kitchen

facilities, I find the tenant is entitled to a rent reduction, pursuant to Section 65 of the *Act*, for the period that the tenant has gone with out them.

I will not order a rent reduction for the privacy issue as the tenant has not established the landlord was wrong in having a camera in a common area.

However, for the loss of the use of the kitchen and laundry facilities, I find that these are important facilities in any tenancy. While I do not agree that they present a value of almost ½ of the value of the tenancy, as the tenant seeks, because the value of any tenancy includes, in addition to cooking and laundering, the ability to use the rental unit and residential property for sleeping; toileting; entertainment; and other daily activities.

As such, I find that a rent reduction in the amount of 1/3 of the amount of rent would be warranted for the duration of time that the tenant was without both a stove and the laundry facilities. After the date the landlord returned the laundry facilities that reduction must be cut in half.

For clarity I order the following rent reductions:

- Permanent (parking) rent reduction of $30.00 per month;
- Temporary (laundry) rent reduction for October 17, 2021 to March 19, 2022 (6 months) - $141.67; and
- Temporary (stove) rent reduction from October 17, 2021 until landlord replaces stove - $141.67.

As a result, I will order that for the period of October 17, 2021 to March 19, 2022 the tenant is entitled to a total amount of $1,880.04. While I will issue a monetary order for this amount, the parties may decide to satisfy the order by reducing future rent payments until the tenant has received the full amount.

Furthermore, the tenant may, effective April 1, 2022, reduce the rent by $30.00 per month for parking and $141.67 for lack of a stove. As it is likely the tenant has already paid rent for the month of April 2022 by the time this decision has been written I order the tenant may also reduce the rent for the month of May for the reductions awarded for April 2022.

Conclusion

I find the tenant is entitled to monetary order pursuant to Section 65 and67 in the amount of **$1,980.04** comprised of $1,880.04 past rent reductions and the $100.00 fee paid by the tenant for this application.

Should the parties not agree for the monetary order to be satisfied by applying to rent owed; the order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: April 14, 2022

Residential Tenancy Branch