Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RR

Introduction

On February 14, 2023, the Tenant applied for a Dispute Resolution proceeding seeking a rent reduction pursuant to Section 65 of the *Residential Tenancy Act* (the "*Act*").

The Tenant attended the hearing, with K.M. attending as an advocate for the Tenant. The Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that his Notice of Hearing and evidence package was served to the Landlord by registered mail on February 23, 2023, and the Landlord confirmed that this package was received. As such, I am satisfied that the Landlord was duly served the Tenant's Notice of Hearing and evidence package. As this evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules"), I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that her evidence was served to the Tenant by being attached to the Tenant's door on March 19, 2023. The Tenant confirmed that this was received; however, he stated that it was served too late for him to be able to respond to it. As this

evidence was served late, contrary with the timeframe requirements of Rule 3.15 of the Rules, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a rent reduction?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2017, that rent was currently established at $661.00 per month, and that it was due on the first day of each month. A security deposit of $312.50 and a pet damage deposit of $312.50 were also paid. A copy of the signed tenancy agreement was entered into evidence for consideration.

The Tenant advised that as per the tenancy agreement, laundry was included. K.M. advised that the Landlord posted a notice on March 23, 2022, restricting the use of the laundry facilities, as new pay machines would be installed within approximately one and a half months. She noted that this notice was not on the approved form and that the Landlord did not offer any compensation for the termination of this service or facility, as required by the *Act*.

The Tenant testified that the new machines were installed in July 2022, and that payment for the use of these machines started on August 1, 2022. He referred to a letter dated August 18, 2022, that he sent to the Landlord informing her of the requirements of the *Act* when terminating or restricting a service or facility, and he

stated that the Landlord offered him a rent reduction of $75.00 for six months, but no ongoing rent reduction. He stated that he refused this cheque.

He noted on his Application that he was seeking a rent reduction in the amount of **$48.00** per month because he does approximately two loads of washing and drying per week, and this compensation was based on the Landlord's implemented cost of $3.00 per load.

The Landlord's initial submission was that this was not an essential service that was terminated or restricted, and she was informed that no one had made this argument. She then stated that there is a laundromat nearby. She confirmed that she typed up a notice to terminate or restrict the use of the laundry facilities, and that she did not use the required, approved form. She provided her reasoning for why the laundry facilities were changed, but those are not relevant to this Application and are not reproduced here. She acknowledged that COVID delayed the delivery of the new coin operated laundry machines until August 2022.

She advised that all the residents of the building get a $15.00 cheque each month for the change in the laundry facilities, and that they are happy with this amount. She testified that the amount the Tenant is seeking for a rent reduction is unreasonable as he is a single man, with no job, and that he rarely leaves the rental unit. As well, she stated that she canvassed other residents in the building about how much laundry they do, and one couple indicated that they spend approximately $45.00 per month doing laundry.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 27 of the *Act* outlines the following regarding terminating or restricting services or facilities:

> ***27*** *(1) A landlord must not terminate or restrict a service or facility if*
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> *(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.

Furthermore, Policy Guideline # 22 states the following pertaining to this issue:

Under section 27 of the RTA and section 21 of the MHPTA 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 as living accommodation, or;
- providing the service or facility is a material term of the tenancy agreement.

A landlord may restrict or terminate a service or facility other than one referred to above, if the landlord:

- gives the tenant 30 days written notice in the approved form, and
- reduces the rent to compensate the tenant for loss of the service or facility.

B. ESSENTIAL OR PROVIDED AS A MATERIAL TERM

An "essential" service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation or use of the manufactured home site as a site for a manufactured home, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

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.

- See also *Policy Guideline 8: Unconscionable and Material Terms*

In determining whether a service or facility is essential, or whether provision of that service or facility is a material term of a tenancy agreement, an arbitrator will also consider whether the tenant can obtain a reasonable substitute for that service or facility. For example, if the landlord has been providing basic cablevision as part of a tenancy agreement, it may not be considered essential, and the landlord may not have breached a material term of the agreement, if the tenant can obtain a comparable service.

D. 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.

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

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that the tenancy agreement clearly indicated that free laundry was included as part of this tenancy. As per above, this would not meet the definition of an essential service; however, as per Section 27(2) of the *Act*, the Landlord may terminate or restrict a non-essential service or facility if the Landlord gives 30 days' written notice, in the approved form, and 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.

Furthermore, it is undisputed that the Landlord clearly breached the *Act* by simply typing up her own notice to terminate or restrict this facility instead of using the approved form

to do so. Regardless of this clear violation of the *Act*, it is primarily a moot point now as the changes have already been implemented. Given this, the only matter I can address in this Application is the Tenant's valuation of the loss of this restriction or termination.

Firstly, I find it important to speak to the Landlord's comment that there is a laundromat nearby. Regardless of if this is the case, there was a term in the tenancy agreement that included free laundry. As such, it should be reiterated again that the Landlord could terminate or restrict this non-essential service or facility by giving 30 days' written notice, in the approved form, but must reduce 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. What this means is that regardless of if the Landlord supplies coin-operated laundry, or if the Tenant had to go somewhere else to do it, the Landlord would still be required to compensate the Tenant in an amount that is equivalent to the reduction in the value of the laundry that was included as part of this tenancy agreement.

Secondly, when assessing the Tenant's submissions on the amount of laundry he would ordinarily do in a week, based on his request for a rent reduction in the amount of $48.00 per month, I find it logical to conclude that this would be broken down as $12.00 per week. Given how much the Landlord has set the laundry machines at per load, this would then be equivalent of doing one wash and dry of a load of coloured laundry, and one wash and dry of a load of white laundry per week. In my view, I do not find this amount of laundry per week to be exceptional or unreasonable.

While the Landlord made submissions on what she believes is reasonable compensation, especially based on her conversations with other residents of the building, I note that she has not provided any documentary evidence to support any of those submissions. Furthermore, I find it important to note that she determined that it was relevant to point out that she spoke with a couple in the building who spent approximately $45.00 per month on laundry. By this rationale, it would be logical to conclude that it was her belief that a single person would then spend approximately $22.50 per month on laundry; however, by her own admission, she is only crediting other residents in the amount of $15.00 per month.

Clearly, even in this suggested scenario, the Landlord's own rent reduction is not even equivalent to what she chose to cite as an example of an equivalent value of loss. Moreover, it is evident that the couple that she used as an example is paying for three times the amount of laundry that they are being credited for. I find that this inconsistency

in the Landlord's calculation of a reasonable rent reduction causes me to reject her position, as I do not accept that this amount being offered is adequate.

Based on my review of the totality of the evidence before me, it is clear that the Landlord failed to comply with the *Act* by not using the approved form when terminating or restricting a non-essential service or facility. Furthermore, it is evident by the Landlord's actions, demeanour, and inconsistent rationale that she has implemented these changes without the appropriate foresight or consideration of her rights and responsibilities as a Landlord under the *Act*. As I am satisfied that the purported amount of laundry the Tenant would do in a week is reasonable, and as I am satisfied that the Landlord now charges $3.00 per load of laundry, I grant the Tenant's request for a rent reduction in the amount of **$48.00** per month as an equivalent value stemming from this loss.

As this change was implemented in August 2022, I find it appropriate to award the Tenant a one time rent reduction of **$384.00** for August, September, October, November, and December 2022, and January, February, and March 2023. This amount may be withheld from a future month's rent. Furthermore, the Tenant is also permitted to a rent reduction in the amount of **$48.00** per month going forward from April 1, 2023.

As a note, should this Decision not reach the parties by April 1, 2023, when rent is due, the Tenant is then permitted to reduce the amount of $48.00, for the April 2023 rent reduction, from the May 2023 rent, in addition to the ongoing rent reduction applicable for May 2023 onwards.

Conclusion

Based on the above, the Tenant is entitled to withhold the amount of **$384.00**, in satisfaction of the rental loss from August 2022 to March 2023, from a future month's rent.

Furthermore, the Tenant is entitled to withhold **$48.00** per month from April 2023 going forward. Again, as noted above, should the Decision not reach the parties before rent is due on April 1, 2023, the Tenant is then permitted to withhold the amount of $48.00 from May 2023 rent, in addition to withholding May's rent reduction as well. In addition, this rent reduction of $48.00 per month will be ongoing until such time as the tenancy is ended in accordance with the *Act*.

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: March 28, 2023

Residential Tenancy Branch