



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RR, AAT, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on May 11, 2023 seeking:

- reduction in rent for repairs, services or facilities agreed upon but not provided
- allowed access for the Tenant and/or guests
- the Landlord's compliance with the legislation/tenancy agreement
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on August 31, 2023. Both parties attended the hearing, and confirmed they received the prepared documentary evidence of the other.

Preliminary Matter – Tenant's evidence

The Tenant provided one piece of evidence to the Residential Tenancy Branch and served this to the Landlord in a very short timeframe prior to the August 31 hearing. This was a rebuttal to what they received in advance from the Landlord. Given the timeline involved, I exclude this single piece of evidence from the Tenant as the Tenant did not serve it at least 14 days in advance as required by the Residential Tenancy Branch Rules of Procedure, Rules 3.11 and 3.14 and 3.17. I find this was not new and relevant evidence that was not available at the time of the Tenant's Application; rather, it was a further submission to rebut evidence provided by the Tenant, with the hearing being the proper forum to make responses. I find consideration of this rebuttal material would prejudice the Landlord.

Preliminary Matter – tenancy already ended

In the hearing, the Tenant confirmed that they moved out from the rental unit on June 30, 2023.

Given that this tenancy ended, the Tenant's access to the rental unit is no longer an issue. The Landlord-Tenant relationship has ended; therefore, no remedy is available with respect to the Landlord's compliance with the legislation/tenancy agreement. I dismiss these pieces of the Tenant's Application, without leave to reapply.

Aside from this, the Tenant provided an exceptionally large amount of evidence that I find forced a later response from the Landlord after the Tenant notified the Landlord of their Application, with the Tenant submitting evidence on this matter on August 7, 2023, despite applying in May. (As an aside, the Tenant in the hearing stated that a large part of what the Tenant submitted to the Residential Tenancy Branch should be ignored as a "work-in-progress".) If there is any factor contributing to a delay from the Landlord, it is the Tenant's own large volume of evidence, and the Tenant's staggered, delayed service of evidence to the Landlord.

Preliminary Matter – monetary loss/other money owed

As above, the tenancy already ended prior to this scheduled hearing. A rent reduction, as claimed by the Tenant here, may take the form of an ongoing amount deducted from future rent payments; however, that is no longer possible. A retroactive rent reduction – *i.e.*, a portion of rent reflecting a reduction in the value of the tenancy agreement – can only take the form of compensation, as per s. 67 of the *Act*.

I amended the Tenant's Application under the authority of s. 64(3)(c) of the *Act* to make the single outstanding issue that of compensation to the Tenant, as listed below.

Issues to be Decided

Is the Tenant eligible for compensation for monetary loss/other money owed, as per s. 67 of the *Act*?

Is the Tenant eligible for reimbursement of the Application filing fee, as per s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement signed by the parties on July 28, 2019. This specifies Room #3 as that being rented to the Tenant, starting on August 1, 2019. The agreement provided for water, internet, free laundry, stove and oven, and furniture.

Regarding the document itself the Tenant in one of their written statements noted:

there is no box to check off for something obvious like “Kitchen” or “Bathroom”. I believe that it is legally fair to assume that those two items go without saying. As a natural accompaniment, “Common Living Area” would go without saying.

There is nothing in the agreement that makes any distinctions between the common living area upstairs and the common living area downstairs.

Even if the agreement is ignored, all the tenants in the house share the same laundry machines, hydro bill, internet connection, and mailbox. That does not seem like a description of two separate units.

The Tenant provided the following points in relation to the tenancy agreement:

- they occupied one of the three rooms upstairs; a couple used two private rooms downstairs in the basement with their own private entrance – this makes one private room per tenant in the rental unit property
- the Landlord did not reside at the rental unit property
- the laundry machines were “downstairs and not in an enclosed space”, being “out in the open in the downstairs common living area” – these machines were shared by all residents at the rental unit property
- the amount of rent the Tenant paid – being \$600 -- entitled them to use of the common living area spaces throughout the rental unit property, not limited to upstairs-only living spaces
- there was no “documentation” to show a separation of upstairs-downstairs – the addendum only refers to “rooms” and not separate larger shared areas – *i.e.*, “There is nothing in the agreement that makes any distinctions between the common living area upstairs and the common living area downstairs.”

The parties signed an addendum to the tenancy agreement on July 28, 2019. The Tenant pointed to specific items in this document as being relevant to the issues:

25. Tenant is not allowed to enter anyone's room without permission. Tenant will be responsible for all their belongings.

32. Tenant should not assign or sublet the rooms to others.

14. Tenant should make their own room neat and clean. Make sure the shared area like kitchen, washroom, living room etc are cleaned after use.

The Landlord pointed to certain addendum items:

5. Tenant agree to respect privacy (No loud music, noise, disturbance, yelling or shouting, group partying etc.) in the house and neighbourhood.

28. Tenant should not allowed to use/take anything which belongs to others without permission.

The Landlord submitted that the shared area in the rental unit property was as stated in item 14 of the Addendum, set out above; that was the kitchen, washroom, and living room in the upstairs only. They described the Tenant as incorrectly providing evidence of 2 kitchens and 2 bathrooms (*i.e.*, upstairs and downstairs) as being considered the shared areas.

The Landlord confirmed that they prepared a second Addendum to present to the Tenant on April 22, 2023; however, the Tenant did not sign that document to indicate their agreement. The Landlord submits that, aside from the 2nd Addendum not being signed, the Tenant nonetheless had agreed to specific terms therein, as provided in their evidence showing an email from the Tenant dated April 27, 2023. Specifically listed, these are:

- use the laundry on Friday between 10am and 9pm – finished by 9pm, meaning the Tenant “will go back upstairs before or at 9 PM”
- the Tenant can “sit opposite to the laundry machines near the wall while [the Tenant is] doing [their] laundry”, free of noise or disturbance to others
- the Tenant “agreed not to use any of the basement area apart from using the laundry machines”

The Landlord submits that the house layout shows two separate units, upper level and lower level. The original signed addendum shows the single upper-level kitchen and washroom and living room as being the common areas only available to the Tenant under the tenancy agreement.

The witnesses in the hearing were those residents who live in the lower part of the rental unit property. They described the Tenant doing laundry late at night, in the laundry area that would interfere with their own quiet enjoyment. The Tenant would do laundry late at night, stating to the witnesses that they disagreed with the terms as set out in the April addendum. At one point, the Tenant doing their laundry in this way had the lower-level residents call the police.

The Tenant's claim is that, under the tenancy agreement, they had the right to use the common living spaces that was in the lower part of the rental unit property. This was not given to them by the Landlord, those items included in the tenancy agreement imply all "common areas" at the rental unit property. The Tenant claims \$10,500 as being the equivalent of 40% of their monthly \$600 rent over a 3.5-year time that they lived in the rental unit. This is "an approximate comparison of the size of the downstairs common living area as a percentage of the size of the common living area throughout the whole house.

As provided by the Tenant in a written statement:

I expect to be retroactively reimbursed for the last three and a half years for a portion of the rent I have been paying each month because I have been deprived by my landlord of various areas in the house which I have the right to occupy. According to the *attached Residential Tenancy Agreement* which I signed, my rent payments entitle me to the use of my private room and the common living area throughout the whole house. The agreement needs to be analyzed to arrive at this conclusion.

My landlord had made a personal decision to eliminate all of the downstairs area from my use apart from using the laundry machines.

In the hearing, the Landlord responded to say the upper level (*i.e.*, with the Tenant's rental unit) has its own entrance; the lower level had a separate entrance. The only common area to both upper- and lower-level residents, and hence the Tenant, is that of the laundry area. The Landlord reiterated that the addendum provided for only one kitchen, and one bathroom.

In a separate written response, the Landlord made the following points:

- when the Tenant first came to view the room for rent, the Landlord showed that the first-floor kitchen, washroom, and living room were for the Tenant to share with other upper-level residents. The laundry was to be shared between all residents in the rental unit property, including the lower-level residents. "[The Tenant] clearly understood and agreed to follow the rules and then [the Tenant] decided to rent our place."
- the lower-level and first floor have separate entrances – neither resident has the entrance key for the other entrance

- the Tenant did not use any part of the lower level other than the laundry area from August 1, 2019 to April 2023: “It means [the Tenant] was aware of this rule from the beginning itself.”
- The Landlord confirmed this with the Tenant in an email dated May 3, 2023: “It was a rule from the beginning itself. We told this earlier verbally in the beginning.”
- The Tenant, in their own video provided as evidence, basically acknowledges that the downstairs residents cannot come upstairs to use the kitchen, washroom, and living room.

The Landlord included written accounts from each of the two lower-level residents. They both set out that the Tenant insisted on doing laundry late at night, past agreed-to hours. The Tenant would use lights and insist on using the lower-levels kitchen and bathroom which the lower-level residents found intrusive and inappropriate. The Tenant would also speak loudly and rudely to the lower-level residents, and then record all interactions and conversations with them.

Analysis

The *Act* s. 65 provides for the following:

. . . if the director [*i.e.*, a delegated arbitrator] finds that a landlord or tenant has not complied with the *Act*, the regulations or a tenancy agreement, the director may make the following orders:

- (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement

In this situation, with the tenancy already ended, a retroactive rent reduction would take the form of compensation to the Tenant, authorized by s. 67 of the *Act*.

The Application – here, the Tenant – has the burden to provide sufficient evidence to establish that the Respondent – here, the Landlord – violated the *Act*, regulation, or tenancy agreement.

The *Act* s. 28 provides that a tenant is entitled to quiet enjoyment of the rental unit; this includes “use of common areas for reasonable and lawful purposes, free from significant interference.”

The Act s. 30 provides that a landlord must not unreasonably restrict access by a tenant of a rental unit that is part of the residential property.

I find that from the start of this tenancy agreement, “common areas” for this Tenant was confirmed to the common areas that are in the upstairs part of the rental unit property only. While the Tenant has tried to show they should rightfully have use of all areas they have access to at the rental unit property, they have done so primarily by parsing what appears in the documentation in place for this tenancy. I disagree with the Tenant’s conclusion for the following reasons:

- The upper- and lower-level at the rental unit property each have separate entrances with separate locks and access; I find that each respective common area is limited to which resident is renting that unit associated with each separate entrance – there was never unfettered access to each of the two separate rental units and the Tenant was merely taking advantage of access to the lower-level unit via the laundry access that they had. I deem that access to be trespassing and an infringement of the other residents’ own quiet enjoyment of their rental unit, proving to be significant interference and/or unreasonable disturbance of those lower-level residents.
- Despite the separate entries, the laundry area is a shared space for all upper- and lower-level residents. That simply requires cooperation and respecting the others’ boundaries. I find as fact that laundry access in no way was tacit or implied approval from the Landlord for the upper-level residents to access the lower-level living area, kitchen, or bathroom. This includes the Tenant. I conclude that the upper-level and lower-level rental units are separate and distinct rental units.
- I conclude there was no occasion for the lower-level residents to ever enter the upper-level areas, the Tenant did not present that ever occurred, and from this I conclude that the lower-level residents did not have access to the upper-level common areas, thereby more simply establishing boundaries – in plainer terms: there was no access to the upper-level common areas by the lower-level residents, so why would the opposite be true?
- There was no tenancy agreement in place for the Tenant to have access to all open areas at the rental unit property that the Landlord later reneged on. I find as fact that the boundaries were in place from the beginning of the tenancy.
- The rent amount of \$600 is exceptionally low: I find that the tenancy was based on the Tenant’s rented room, the upstairs kitchen, bathroom, and living room. If the Tenant

was allowed extra access, I find it more likely than not, on a balance of probabilities, that a higher rent amount would have been in place.

- I find the Tenant did not express their need to use the lower-level kitchen, bathroom, and living area before some incident arose in April 2023. There is no evidence of the Tenant raising the issue of lower-level access with the Landlord prior to April 2023. This works against the Tenant claiming a rent reduction for the entire duration of this tenancy. The Tenant alluded to some emergency need for an extra bathroom, and dissatisfaction with their messy kitchen from the other upper-level residents; however, there is no evidence the Tenant raised that as a proper issue of concern with the Landlord.
- The lower-level rental unit is separate and distinct. The Landlord was not unreasonably restricting access to that separate rental unit by the Tenant here, and the Tenant was allowed access to all other areas of the rental unit property, unhindered, for the duration of the tenancy.

In conclusion, I find the Tenant was not actually deprived of anything that was agreed to in the tenancy agreement. They were not deprived of anything that was separately granted to other residents. Therefore, I conclude there was no breach of the Act or the tenancy agreement by the Landlord.

I find this was a matter where the Tenant had a conflict with the lower-level residents over the use of the laundry area. This claim from the Tenant, I find, is the Tenant's attempt at validating their viewpoint in that conflict, though I can't determine what motivation the Tenant has for doing so, other than the need to be right. This is borne out by the amount of evidence the Tenant submitted that focused on their version of events in regard to the conflict, rather than the distinct issue of access.

For the reasons above, I dismiss this Tenant's Application, without leave to reapply. Because the Tenant was not successful in this Application, I make no award for reimbursement of the Application filing fee.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application in its entirety, without leave to reapply.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 25, 2023

Residential Tenancy Branch