



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes PSF, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on August 12, 2023 seeking:

- provision of services/facilities required by the tenancy agreement/law
- the Landlord's compliance with the legislation/tenancy agreement;
- reimbursement of the Application filing fee.

The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on October 3, 2023. In the conference call hearing I explained the process and provided the participants the opportunity to ask questions.

Issue(s) to be Decided

Is the Landlord obligated to provide services/facilities to the Tenant, as required by the tenancy agreement/*Act*?

Is the Landlord obligated to comply with the *Act* and/or tenancy agreement?

Is the Tenant eligible for reimbursement of the Application filing fee?

Background and Evidence

The Tenant provided a copy of their current tenancy agreement, showing a start to the current iteration on March 1, 2023. The rent amount is \$4,284 per month, payable on the first of each month. The listed items on page 2 specify what is included in the rent.

In the hearing the Tenant explained that they transferred into the upstairs part of the rental unit, after previously staying in the lower part (*i.e.*, the basement) from April 2022, while a different family member was the Tenant named on the previous tenancy agreement. As of earlier 2023, that family member took up residence in the basement, while the Tenants in the hearing moved upstairs.

The Tenant described the rental unit as having two kitchens, one upstairs and one downstairs.

The Tenant provided a basic summary of the situation under each heading on their Application:

- [the Landlord] has taken our shed, removing cupboards and stove in the basement and not giving a rent decrease with loss of appliances
- Landlord is taking appliances, cupboards, and shed and not decreasing rent for loss of these items.

For the Tenant this started in early August, resulting from information provided to the local municipality from the Landlord's showings of the rental unit in line with a sale of the property. An illegal basement suite was reported to the municipality, and after investigation the municipality ordered the Landlord to dismantle that basement living space.

The Landlord provided a letter to the Tenant dated August 12, in which they set out that they must comply with the municipality's request, and "remove the secondary suite." This included removal of the stove and cabinets in that basement part of the rental unit. The Landlord set out clearly:

Please note the rent will remain as agreed in the RTA dated February 12, 2023. There was no additional rent being charged and paid for using the basement as a secondary suite. It was never rented by us separately to you or to anyone at any time.

The Landlord gave notice to the Tenant on August 21, stating their intention to enter the rental unit “to dismantle basement according to city . . . bylaws.” The Landlord intended to remove the stove and cupboards from the basement on August 26-27.

The Tenant clarified that the Landlord had to remove cupboards that were in place, as well as the stove/range hood.

The Tenant responded to this notice with a letter to the Landlord dated August 24. They stated the Landlord’s notice does not meet the requirement as per the *Act* of notifying a tenant by 30 days’ written notice of a termination/restriction of a service or facility. The Tenant stated they require 30 days written notice, as well as “resulting rent reduction from the loss of the [basement portion of the rental unit].”

The Tenant stated that the family member who resided in the basement part of the rental unit had since left and taken up residence elsewhere. This was because the basement was no longer available to them, entailing a physical hardship to them to use the stairs for meal preparation.

The Landlord in the hearing set out that the lower level is 1,050 square feet, and the upper level is 1,066 square feet. The Landlord never had any separate agreement for the lower level of the rental unit, and there was no separate lower level unit.

The Tenant also proposed giving up the lower level of the rental unit which would be essentially of no use to them without the stove/range hood in place for use. To them, this would be commensurate with a reduction in rent.

The Tenant also set out that they lost the use of the shed when the Landlord took to using that shed for the storage of the appliance they removed from the lower level of the rental unit. This became an issue only once the Tenant made this present Application to the Residential Tenancy Branch. The Tenant still has items in this shed, ones that are necessary for upkeep of the yard at the rental unit property, which is part of the agreement.

Analysis

The *Act* s. 1 defines “service or facility” by including “appliances and furnishings”.

I find the agreement was in place between the parties based on the Landlord's provision of appliances and furnishings in the lower level – this included the stove/range hood, and the cupboards that were in place. I find, in effect, this appliance and furnishings were in place as part of the tenancy agreement the parties signed in March 2023. The lower-level stove/range hood, and cupboards, are reflected in and form part of the rent amount -- \$4,284 – that the Tenant pays each month.

The *Act* s. 27 provides that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation, or providing the service/facility is a material term of the tenancy agreement.

Following this, s. 27 sets out that a landlord may restrict the service/facility with proper 30 days' written notice, and a reduction in rent that is equal to the reduction in the value of the tenancy agreement.

I find the tenancy agreement, with the current amount of rent paid by the Tenant, provides for the appliance and cupboards in place in that lower level. I find the "service or facility", in being strictly relied upon by the additional occupant at the rental unit property who was part of the Tenant's own family, was essential to the Tenant's use of the rental unit as living accommodation. Minus that service or facility, the Tenant was not able to utilize the space by having an extra occupant in place who contributed to the monthly rent amount. I find this fundamentally unfair to the Tenant.

With the removal of the stove/range hood, and cupboards, I find there has been a reduction in the value of the tenancy agreement. More simply, the Tenant is not receiving what they agreed to pay for on a monthly basis when they signed the agreement.

Given the impact this has on the Tenant, I find the service/facility is essential to their use of the rental unit as living accommodation.

More incidental to my finding is the fact that the Landlord did not give notice to the Tenant in the approved form. The Tenant was forthright in identifying this to the Landlord at the time. The Tenant proposed foregoing the use of the lower level in the rental unit entirely; however, that space would be essentially useless to the Landlord who is prohibited as per the local bylaw from renting it out separately as a secondary suite.

With my finding that the value of the tenancy was reduced, I find that a rent reduction is in order. I find a rent reduction of \$400 per month is fair compensation to the Tenant for the reduction in the value of the tenancy to them.

The Act s. 65 provides authority for the following:

... if the director finds that a landlord or tenant has not complied with the Act, the regulations or the tenancy agreement, the director may make any of 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 a tenancy agreement

As per s. 65(1)(f), I grant a rent reduction to the Tenant as follows:

- rent for the month of September 2023 be reduced by \$400 – the Tenant may deduct this amount from their future rent payment for November 2023
- rent for the month of October 2023 be reduced by \$400 – the Tenant may deduct this amount from their future rent payment, also for the month of November 2023
- from December 2023 onwards, the Tenant may reduce rent by \$400 each month going forward.

Regarding the shed, I find the Landlord must make other arrangements for storage of their own items elsewhere. There was nothing to suggest the Landlord's storage of items in the shed (which I understand to be of limited size) was short-term or temporary. I find it imposes too much on the Tenant to restrict that space previously made available to them, especially with the expectation that the Tenant tend to yard work. In line with the rationale above, I find the Landlord may not lock or otherwise remove the use of the shed from the Tenant. Continuing to do so would possibly entail a further reduction in rent.

Given my findings on the provision of services/facilities, I dismiss the other piece of the Tenant's Application for the Landlord's compliance.

The Tenant was successful in this Application, and I find it was necessary for them to bring this Application to the Residential Tenancy Branch for resolution. I grant the

Tenant a one-time deduction of the Application filing fee – *i.e.*, the amount of \$100 -- from their December 2023 rent payment.

Conclusion

As set out above, I grant a rent reduction to the Tenant, for the removal of a service/facility that was essential to their use of the rental unit. I grant reimbursement to the Tenant of the Application filing fee.

I made 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: October 4, 2023

Residential Tenancy Branch