Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, PSF, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An order for the Landlord's compliance – Section 62;
2. An order for the provision of facilities and services – Section 65; and
3. An Order to recover the filing fee for this application - Section 72.

At the outset of the hearing a designated representative of the Tenants (the "Tenant") was identified to speak on behalf of all the applicants. The Landlord and the Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

The Landlord sought an adjournment as the Tenant's evidence package was not received by the Landlord until December 1, 2014 and the Landlord states that they were not given sufficient time to prepare for the hearing or to review and provide evidence. The Landlord states that it did fax an evidence package to the Residential Tenancy Branch on December 2, 2014. Given the Landlord's evidence that they provided evidence on December 2, 2014 and were not proposing the provision of any other evidence I deny the request for an adjournment.

Issue(s) to be Decided

Is the Tenant entitled to an order that the Landlord comply with the Act or tenancy agreement?

Is the Tenant entitled to an order for the provision of services or facilities?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The Tenant states that the tenancy agreements provide for the provision of laundry and that prior to August 2014, when the Landlord became the new owner of the building containing the rental units, laundry was being provided by coin operated machines with one load of wash costing $1.75 and 60 minutes per dryer load costing $1.50. The Tenant states that on or about September 8, 2014 the Landlord increased the costs of each machine load to $4.50 and reduced the drying time for each load by 30 minutes. Approximately 2-3 weeks later the Landlord reduced the costs to $3.25 per machine and reverted back to 60 minutes drying time. The Tenant argues that the provision of laundry is a service or facility provided under the tenancy agreement and since the tenancy agreement contains no rate on the costs of this service or facility that any increase in facility costs are restricted to allowable rent increases. In the alternative, the Tenant argues that the increase is excessive and unconscionable. It is noted that all the tenancy agreements, except for the tenancy agreement from 2005, provides for "washer and dryer in common area (pay machines-additional fee)". The 2005 tenancy agreement is the same except that it does not note "additional fee".

The Landlord states that a comparison of costs at commercial laundry shows that the amounts charged by the Landlord is a commercially competitive rate. The Landlord states that the rates were raised to reflect the rising costs of the building. The Landlord argues that the tenancy agreement only requires the provision of the coin operated machines and that they are not bound to keep rates that are not included in the tenancy agreement.

The Tenant states that the tenancy agreements provide for the storage of bikes in a designated storage area and that this storage area has been, since the onset of the tenancies, a room that also contains the laundry. The Tenant states that the Landlord has required the Tenants to remove their bikes from this area and to store them in the individual lockers. The Tenant argues that this is contrary to the tenancy agreement and results in a loss of convenience, access and security. The Tenant states that the Landlord has issued notice to end tenancy in relation to this requirement and has threatened to have the bikes removed by the Landlord.

The Landlord states that the area is creating a fire hazard as there is insufficient room for all the bikes being stored. The Landlord states that any Tenant who does not have its own storage locker will be provided one from the Landlord at no cost.

There is no dispute that the Tenants are continuing to keep their bikes stored in the laundry area. There was some discussion on the Landlord's requirement that all bikes stored in the laundry area be tagged to ensure only residents are using the area. The Parties wished to reach a settlement on the current storage of bikes in the laundry area and did so as follows: The Landlord will provide the Tenants with small bike tags, the numbers on which will correspond to the registered information provided by the Tenants of their stored bikes.

The Tenant states that the tenancy agreement provision in relation to carpets has either never been enforced by the previous Landlord or that the previous Landlord approved the Tenant's actions in relation to the carpets. The Tenant states that the current Landlord has informed the Tenants that it will be strictly enforcing the carpet clause and the Tenant argues that if such enforcement is correctly allowed by the tenancy agreement then its fulfillment requirements should be reasonable. The Tenant states that the Landlord has told them they must carpet all floors touched by feet and that some floors of the unit are not hardwood. The Tenants provided evidence that the Landlord has informed the Tenants that by not complying with the flooring requirement

they are in material breach of the tenancy and will be served with eviction notices for the breach.

The Landlord states that he has only required that the Tenants cover rooms with wood floors and where no furniture covers the floor. The Landlord states that the clause was designed to protect the heritage floors and as the Landlord cannot control the Tenants movements. The Landlord states that they provide regular hardwood floor maintenance to the Tenants at no cost to the Tenants. The Landlord states that the majority of the units have no carpets and the Tenants don't take off their footwear when they enter their units from outdoors. The Landlord states that the Tenant's photos of a unit being rented without carpet is a photo of an unfinished unit and that new tenancy agreements also contain the same carpet clause.

The Tenant states that the Landlord refuses to take post-dated cheques. The Tenant submitted correspondence from the Landlord outlining acceptable rent payment methods. The Landlord does not deny refusing post-dated cheques and states that to accept these cheques create an administrative nightmare when tenants change banks and have to reissue cheques. The Landlord states that this has occurred with one unit since taking over the building. The Landlord argues that nothing in the tenancy agreement or act requires him to accept post-dated cheques.

The Tenant states that at the time of the application the Landlord was going to install audio and video surveillance in the building. The Tenant states that the Landlord has since informed the Tenant's that no audio surveillance will be installed but the Tenants are concerned about the location or hiding of the video surveillance. The Landlord states that the video surveillance will be installed in common areas, the parking lot and the exterior of the building for security measure. The Landlord agrees to post a notice informing the Tenants of the location of the video installations.

The Tenant states that they are not confident that the emergency contact provided by the Landlord will be available to the Tenants when an emergency happens. The

Landlord states that he has provided emergency contacts to each of the Tenants and that these contacts are available to the Tenants 24/7. The Landlord agrees to post this emergency contact information in the building.

The Tenants state that the tenancy agreement provides that heat is provided with the rent and that despite cold outdoor temperature in September 2014 the Landlord did not turn on the heat until October 1, 2014. The Tenant states that each unit has an individual thermostat and indicates that the Landlord should never turn the heat off so that it is accessible on demand by the Tenant.

The Landlord states that nobody informed the Landlord that they needed heat in September and that had they done so the heat would have been turned on sooner. The Landlord states that to keep the heating system running when it is not necessary to have heat would be unreasonable wear and tear of the system.

The Tenant states that the past and present acts of the Landlord to threaten evictions and the entry of their units for various and frivolous reasons by the Landlord are harassment and an infringement of their rights. The Tenant asks that the Act for entering units be clarified for the Landlord. The Tenant seeks an administrative penalty against the Landlord. The Tenant states that they currently have no evidence that the Landlord has acted contrary to or out of compliance with any order or Decision of the RTB. The Tenant seeks orders that the Landlord comply with the Act.

Analysis

Laundry

Section 1 of the Act defines facilities and services to include laundry facilities. Rent is defined as money paid in return for, inter alia, services and facilities. Section 7 provides that a landlord may charge a fee for services and facilities if those facilities are not required to be provided under the tenancy agreement. The tenancy agreement provides for “washer and dryer in common area (pay machines-additional fee)”. Although one tenancy agreement does not include the term “additional fee”, I take this

tenancy agreement to be essentially the same as it includes pay machines which implies a cost.

As the tenancy agreement provides for the provision of laundry facility and as the Landlord may not charge a fee for the use of those facilities, I find that the coin operation or charge referred to in the tenancy agreement can only be interpreted to be a cost to use the facilities and that this cost is a part of the rent. As such any increase in the cost of using those facilities by the Tenants is subject to increases in accordance with allowable rent increases. As the costs to use the machines have clearly increased over the allowable rent increase, I find that the Landlord is not in compliance with the Act and I order the Landlord to immediately revert to the charge amount that existed in July 2014 and to only increase this cost in accordance with the provisions under rent increases. The Tenants have leave to reapply for compensation should any of the Tenants have incurred extra costs for laundry from August 2014 to the date that the machine charges are returned.

Bike storage

Section 1 of the Act defines facilities and services to include storage facilities. Section 27 of the Act provides that a landlord may terminate or restrict a facility that is not essential or a material term of the tenancy with notice and with an equivalent value of a rent reduction to the tenant. The tenancy agreement provides for storage generally and specifically provides bike storage in a “designated area only”.

It appears that the Landlord has changed the designated area to those who currently have a personal storage locker to that storage locker. However this obviously reduces the value of the personal storage locker and there is no evidence that any amount of a rent reduction has been considered. Even with the provision of personal storage areas, this could also reasonably result in a loss of convenience and raise safety concerns.

There is also no evidence that any of the Tenants have moved their bikes and the Landlord has agreed to a tag system for the storage of the bikes in the laundry area. As

a result, there is nothing to be determined at this point and the tenants have leave to reapply for compensation should the use of the laundry area be removed as the designated storage area and if a comparable area, taking into account convenience and security, that does not act as a reduction in the value being paid by the Tenants for such storage, is not provided. In making such a reduction, I strongly encourage the Landlord to obtain external storage costs and to also factor in a value for the loss of convenience or any other security costs that may arise to the tenant from having to use such external storage facilities.

Flooring

The relevant section of the tenancy agreement provides that "The tenant will, within one month of the commencement of this tenancy, carpet all traffic areas that were previously bare floor, to the landlord's reasonable satisfaction". Given that the Landlord is now requiring tenants to carpet the floors under, albeit under threat of eviction, it is clear that this term of the tenancy agreement was either never implemented by the Landlord or the flooring was found to be acceptable "to the landlord's reasonable satisfaction" until now. And for at least one Tenant this has been the case for approximately 9 years. The lack of enforcement on this term of the tenancy agreement may have some effect on a future determination of damages being claimed for a period that includes when the term was not enforced. The lack of enforcement also belies the materiality of the term. However even if this term was not enforced, nothing stops the Landlord from now enforcing this section as long as a reasonable amount of time is provided to the Tenant to comply. If the term was enforced to the "landlord's reasonable satisfaction" until July 2014, then it would seem that to require additional carpeting to what was then existing the Landlord would also require a basis to substantiate a change from what was once considered reasonable.

Given the above finding that the term is not a material term and considering that the Landlord either has or will attempt to evict the Tenants for breach of this term, I order the Landlord to revoke all and issue no further eviction notices against the Tenants that assert a breach of a material term in relation to flooring as the only basis for the

eviction. I further order the Landlord to remove this reason from any other eviction notices that may be issued or have already been issued to the Tenants and not yet determined.

Post-dated cheques

The tenancy agreement provides that "rent must be received" by the Landlord. Section 1 of the Act defines rent as money paid or value given by a tenant. Nothing in the tenancy agreement or Act sets out how rent is to be "received". A tenancy agreement may not be changed to add a term, i.e., how rent is to be received, without mutual agreement. As there is nothing in the tenancy agreement on how the landlord will receive monies or value, nothing stops the Tenants from giving the Landlord post-dated cheques for rent. Should the Landlord refuse to accept rent paid through post-dated cheques, he does so at his own peril.

Surveillance Cameras

As the Landlord has agreed to inform the Tenants of the placement of the video surveillance cameras and the Tenants did not object to the locations identified by the Landlord at the hearing, and considering that the Landlord will not be installing audio surveillance, I find that the Tenants have not substantiated the Landlord is out of compliance with the Act and I dismiss their claim for an order of compliance.

Emergency Contact

As the Landlord has provided an emergency contact to the Tenants and will be posting this contact information, I find that the Tenants have not substantiated the Landlord is out of compliance with the Act and I dismiss their claim for an order of compliance.

Heat

Section 6 of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. Although the Landlord's financial interests are something to be considered by the Landlord in the overall scheme of the providing rental housing, it is only the

tenancy agreement and the Act that determines the rights and interests between the Parties. As the tenancy agreement requires the provision of heat, I find that the Landlord must provide that heat and in providing that heat the Landlord must ensure that it is accessible at all reasonable times to the Tenants, regardless of outdoor temperatures or overhead costs to the Landlord. For example, an elderly person, infant or ill person may reasonably require heat when other persons may not. In such cases, after being informed by the Tenant, the Landlord should ensure such heat is available to be controlled by that Tenant. Should the Tenants have suffered any damages in relation to the loss of heat the Tenants have leave to reapply for compensation. The Landlord is free to reduce his costs as long as such acts are not reductions to the Tenant's rights or value paid.

A party is always free to make an application for dispute resolution to assert rights and make claims. However where a party makes ongoing baseless claims, it may become harassment. As there is no evidence of repeated baseless claims being made by the Landlord, I find that the Tenant has not substantiated that the Landlord is out of compliance with the Act. As there is no evidence that the Landlord has acted contrary to or out of compliance with an order or Decision of the RTB I also find that there is no basis for an administrative penalty.

Finally, should the Landlord wish to carry out inspections or enter the Tenant's unit I set out the relevant parts of the Act for the Landlord's information. Section 29 of the Act provides that a landlord's right to enter a rental unit is restricted as follows:

> (1) 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;

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

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

As the Tenants' applications have had merit, I find that the Tenants are entitled to recovery of their filing fees and I order each Tenant to reduce the next month's rent by $50.00.

Conclusion

I order the Landlord to immediately revert to the coin charge amount for the laundry facilities that existed in July 2014 and to only increase this cost in accordance with the provisions under rent increases.

I order the Landlord to revoke all eviction notices that assert a breach of a material term in relation to flooring as the only basis for the eviction and to remove this reason from any other eviction notices that have already been issued and not yet determined.

The Tenants have leave to reapply for compensation in relation to laundry costs and any losses that may have arisen from a loss of heat.

I order each Tenant to reduce the next month's payable rent by $50.00 in full satisfaction of the monetary claim.

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: January 9, 2014

Residential Tenancy Branch