



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC Money Owed or Compensation for Damage or Loss

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act. The tenant is also seeking an order for a rent reduction based on restriction of services and facilities that are supposed to be provided by the landlord under the tenancy agreement.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for \$300.00 representing a retro-active rent abatement of \$20.00 per month from August 2007 to the present. The tenant was also requesting a reduction in future rent in the amount of \$20.00 per month as compensation for loss of services and facilities that were supposed to be provided by the landlord under the tenancy agreement. The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss. This determination is dependent upon answers to the following questions:

- Has the tenant submitted proof that the landlord has denied or reduced services that the landlord is required to provide under the tenancy agreement?
- Has the tenant presented proof of the existence and monetary value of this damage or loss?

The burden of proof is on the applicant.

Background and Evidence

The tenant submitted into evidence:

- a copy of the tenancy agreement dated January 10, 2006 showing that “basic cablevision” is included in the rent
- a copy of the tenancy agreement dated March 13, 2008 showing that “basic cablevision” is included in the rent,
- a copy of a brochure showing that “basic cable vision” is included in rent ,
- a document titled “Company Profile” for First run Multimedia Corporation,
- a copy of a letter from the landlord dated June 18, 2007 informing tenants that due to costs, there would be a change in service providers of cable TV and incorrectly advising tenants that they could retain the current cable provider’s services at their own expense.
- a copy of a letter from Shaw Services regarding the discontinuation of Shaw services,
- a copy of a letter from the landlord to all residents dated August 14, 2007 discussing the changes and providing a list of the new channel lineup

- a copy of a letter dated October 8, 2008 from the Residents Committee to the landlord,
- a copy of a letter dated June 13, 2008 from Spokesman-Resident Committee to residents summarizing a meeting with the board of directors held on June 12, 2008,
- a copy of a letter to the Board of Directors dated June 12, 2008, requesting a change in channels,
- a copy of a communication from the landlord dated July 24, 2008 advising of a new channel,
- a copy of a letter from the landlord to the tenant dated August 5, 2008 advising that there will be no changes in the decision regarding the television provider
- a letter from the tenant to the landlord dated September 8, 2008, complaining about the quality of the channels chosen by the landlord,
- A written chronology of events during the period from August 2007 until August 14, 2008.
- A copy of a complaint to the Board of Directors and a request for changes passed on August 14, 2008

The tenant testified that residents had previously received basic cablevision from the cable company pursuant to the tenancy agreement. However, in 2007 the landlord unilaterally decided to change television cable providers and contracted with a satellite TV provider. The tenant testified that this decision was made without taking into account the needs of the residents and without proper input from the people affected by the changes. The tenant testified that the decision to terminate the cable company was based on faulty financial calculations and errors in estimating the actual costs. The

tenant testified that the changes made by the landlord resulted in an inferior channel selection that served to devalue the tenancy. The tenant's position is that the actions of the landlord violated the terms of the tenancy agreement and the tenant is seeking compensation for the reduced value in cable services in the amount of \$20.00 per month.

The landlord testified that the decision to change cable service providers from the cable company to a satellite system was a business decision and that the goal was to provide equivalent value of basic cable selection to the tenants without incurring a large increase in expenditures. The landlord testified that continuing with the current cable provider would be too costly for the organization to absorb without passing extra costs on to their residents. The landlord testified that every effort was made to supply the channels that the residents wanted. The landlord stated that returning to the original cable provider is not an option.

The landlord also pointed out that this tenant had signed a tenancy agreement which included an addendum that specifically related to the provision of satellite channel services and listed the programming in detail. The landlord provided a copy of this document into evidence and it verified that the tenant had initialed the schedule showing all of the new channels. The landlord testified that, therefore the landlord was in complete compliance with the tenancy agreement signed by both parties on March 13, 2008.

Analysis

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a tenant or a landlord does not comply with this Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the tenancy agreement and that this non-compliance resulted in costs or losses, such as a reduction in services, to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

- a. Proof that the damage or loss exists,
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- c. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- d. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the onus is on the claimant, that being the tenant, to prove the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred

Based on the testimony of the parties, I find that the tenant was not able to establish that the landlord had violated neither the Act nor the tenancy agreement. In fact, because the tenant had recently signed an agreement accepting the channels offered as part of the tenancy agreement, this had become a valid term of the contract.

In any case, even if the tenant had proven that the landlord violated the agreement, the tenant would have been required to prove a tangible loss was suffered in order to establish damages. While it is evident that the tenant does not consider the two TV services as equal, the fact that the tenant was in receipt of at least “basic” cable services, would serve to make the issue of damages moot.

Moreover, section 27 of the Act does permit a landlord to terminate, reduce or alter services and facilities, other than essential services, by giving 30 days' written notice, in the approved form and by reducing 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. In this instance I find that, while the channels and programs may differ, the landlord had, to the best of its ability, furnished an equivalent service to replace the one that had been there in the past. While it is understandable that from the tenant's perspective the two services may not be considered to be of equal quality and are not identical, it is important to note that the tenancy agreement signed by these parties only specified “basic cablevision”. There is no doubt that the satellite service would fit this description.

Accordingly I find that the tenant is not entitled to an abatement for loss of services and facilities, nor compensation for damages and loss under the Act or tenancy agreement.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant's claim must be denied and the application is hereby dismissed in its entirety without leave to reapply.

October 8, 2008

Date of Decision