



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes RR, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution to allow the Tenant to reduce rent for a service agreed upon, but not provided, and to recover the filing fee.

The Tenant and two witnesses appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Notice of Hearing and Application documents were served on the Landlord on December 1, 2010 by registered mail. The Tenant provided a tracking number, the Landlord submitted evidence acknowledging receipt of the hearing documents and I am satisfied that service was done in accordance with Section 89 of the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Preliminary Issue:

Even though she did not appear, the person named as Landlord on the Application submitted evidence stating that she was a pro bono representative of the owners of the rental unit and was not the Landlord. She requested that the Application be re-filed to reflect the owners' names as Landlord.

Section 1 of the Residential Tenancy Act defines a "landlord," among other things, as follows:

- a) The owner of the rental unit, **the owner's agent or another person who on behalf of the landlord** permits occupation of the rental unit under a tenancy agreement or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

(emphasis added)

The documents submitted by the Tenant clearly show the person named on the Application as Landlord acted as an agent, she refers to herself as agent on the Notice

of Rent Increase, and manager of the building on other documents submitted by the Tenant and the Landlord and has acted in all manner as the agent since September 24, 2010, at the latest. Therefore I find that the name listed as the Landlord on the Application is the proper party to be named as Landlord, and this hearing proceeded accordingly.

Issue(s) to be Decided

Has the Tenant established an entitlement to a rent reduction and to recover the filing fee?

Background and Evidence

The Tenant testified that he was not offered a written tenancy agreement, but that the agreement was a hand-shake deal with the building's owner.

I accept the evidence and testimony of the Tenant, and lack of evidence of the Landlord, who did not appear, and find that this tenancy began on August 15, 2008, on a month to month basis, the monthly rent is \$380.00, payable on the first day of each month. There was no security deposit paid.

The Tenant testified that he has lived in the rental unit since August, 2008, with the exception of a period of time from July to November 2009.

The Tenant testified that the rent included cable television, which was always part of the agreement, as it was with all tenants in the building. As further support of this claim the Tenant testified and provided evidence that he has been provided cable since the day the tenancy started, but received a communication from the Landlord on October 15, 2010, informing him that cable had to be transferred to his name by December 1, 2010.

The Tenant testified and provided evidence that in May 2010, the owner of the building posted a notice of vacancy for another rental unit in the building, which stated that the rent included cable.

The Tenant's witness, SM, another tenant in the building, testified that she prefers more than basic cable, so she pays her cable bill, but that her rent was reduced by the amount of basic cable.

The Tenant's witness, RM, another tenant in the building, testified that it was his understanding basic cable is provided in rent.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Dealing with the rent, the onus is on the Landlord to prove the amount of rent payable and agreed upon at the commencement of the tenancy, as well as other terms. The Landlord did not prepare a tenancy agreement as required under the Act, and therefore is unable to prove that basic cable was not a material term or other terms of the tenancy agreement. In the absence of proof from the Landlord, the Tenant's evidence is sufficient. I therefore, **find** as follows:

1. The tenancy began on August 15, 2008, and is on a month to month basis.
2. Basic cable under Section 1 of the *Residential Tenancy Act* is a material term of the tenancy agreement, which I find the owner of the building agreed to provide as part of rent.
3. The amount of rent payable is \$380.00, per month payable on the **first** day of each month.
4. Monthly rent will include basic cable, use of laundry facilities, refrigerator and stove, in addition to the other items and terms already being provided. Rent does not include garbage pick-up.

I find that a security deposit was not paid and is not payable for failure to require the same at the time of entering into the tenancy agreement with the Tenant, pursuant to Section 20 of the Act.

I find the Tenant met his burden of proof and submitted sufficient evidence to prove that the Landlord has terminated an agreed upon service by issuing a notice which was not in the approved form and without reducing the rent by an appropriate amount.

I therefore **cancel** the notice to the Tenant requiring him to obtain his own cable service and I **order** the Landlord to restore or continue to provide basic cable, effective immediately.

Upon any further attempt to terminate a service provided to the Tenant, I **order** the Landlord to comply with the Act by using the approved form and reducing the rent by an appropriate amount.

I order the Notice of Rent Increase, scheduled to be effective February 1, 2011, be **cancelled** due to the incorrect amount listed as current rent, which should be listed as \$380.00. The Landlord is at liberty to issue a new Notice of Rent Increase listing the correct current rent.

I find that the Tenant has succeeded in his Application and that he should recover the filing fee from the Landlord. I direct that he deduct **\$50.00** from the January 1, 2011, payment of rent.

Conclusion

The Landlord is ordered to provide basic cable as part of rent.

The Tenant is allowed the filing fee and may deduct \$50.00 from the January 1, 2011, payment of rent.

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: December 17, 2010.

Dispute Resolution Officer