



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes FF, MNDC, OLC

Introduction

A substantial amount of documentary evidence and written arguments have been submitted prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

The applicant is claiming that the respondents have failed to supply services that are supposed to be provided in the tenancy agreement, and therefore she is requesting a reduction in pad rent equivalent to the costs of those services and is requesting to be reimbursed for having paid all those services since the beginning of the tenancy. The applicant is also requesting that the respondent bear the \$50.00 cost of the filing fee.

Background and Evidence

The applicant testified that:

- Her tenancy began on June 1, 2001, and she believes that water, garbage, and sewer, were included in the rent.
- When she received her notice of rent increase in September of 2004, the landlord had checked off the boxes for water, garbage collection, and sewage disposal, under items included in the rent.
- Since she had always been paying for garbage collection and sewage disposal on her taxes, she decided to write a letter to the landlord, and did so on June 20, 2005.

- In the letter she pointed out that garbage and sewer were supposed to be included in the rent, and requested that she be reimbursed for the monies she had paid for garbage and sewer since the beginning of her tenancy.
- To date the landlord has not reduced the rent or reimbursed her for any of the garbage, recycling-(which she considers to be part of garbage), and sewage payments already paid by her.

The applicant is therefore requesting that her pad rent be decreased by \$276.01 per year for the loss of these services and that she be reimbursed \$2008.48 for services that were supposed to have been included, but for which she has paid, since the beginning of her tenancy.

The landlord testified that:

- They too are charged a sewer tax by the city, and they do not pass this tax onto the tenants, it is included in the rent. Therefore they are paying for sewage disposal.
- They are also paying general Municipal Levy's that he believes covers things such as general garbage collection.

The landlord therefore does not believe that rent should be reduced or any money should be reimbursed to the tenant.

Analysis

It is obvious from the information presented, that garbage collection and sewage disposal are items that are included in the rent, and in fact the landlord did not argue that they were not included.

Therefore the tenants should not have been paying for garbage collection and sewage disposal, however it is my finding that the tenant has shown that since at least 2002 the tenant has been paying for garbage collection and sewage disposal.

I do not accept the landlord's arguments that because the park also pays a sewage fee, that they are paying for the tenants sewage disposal. If the agreement was that the landlord pays

for garbage collection and sewage disposal, then the tenant should not be paying anything for these services.

Section 27(2) of the residential tenancy act states:

(2) A landlord may terminate or restrict a service or facility, if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces 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 case, although landlord did not give 30 days' written notice in the approved form, it is my finding that by not paying for garbage collection and sewage disposal, they terminated those services in 2002, and therefore they should have, at that time, reduced the rent by an amount equivalent to the cost that the tenant had to pay for garbage collection and sewage disposal.

In 2002 the tenant paid a total of \$163.70 annually for garbage collection and sewage disposal- (I have not included the city sewer tax/levy in this calculation, because the sewer tax is a tax for sewer line maintenance and upgrades and not for sewage disposal). This works out to a total of \$13.64 per month, and therefore I am confident that, had the tenant applied for rent reduction at that time, a \$13.64 per month reduction would have been ordered, and then from that date forward, garbage collection and sewage disposal would not be considered included in the rent.

I therefore order a \$13.64 per month reduction in the rent. I am not willing to order that the landlord bear the cost of any further increases in the cost of garbage collection and sewage disposal however because had the tenant applied in a timely manner, rather than waiting nine years, any subsequent increases in the cost of garbage collection-(including recycling) and sewage disposal would have to have been borne by the tenant, as it would no longer be included in the rent.



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It is also my decision that I will not order that the landlord reimburse the tenant for the full nine years of overpayments, because the tenant had an obligation to pursue this claim in a timely manner and mitigate the loss. I will therefore only order that the landlord reimburse the tenant for the past two year period of overpaying the rent by \$13.64 per month, for a total of \$327.36

It is also my decision that the landlord must bear the \$50.00 cost of the filing fee that the tenant paid for application for dispute resolution.

Conclusion

I hereby order that the tenants rent is reduced by \$13.64 per month starting January 1, 2011.

I further order that the landlord pay to the tenant the sum of \$377.36.

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 16, 2010.

Dispute Resolution Officer