



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on April 15, 2012. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant allowed to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testifies that this tenancy started on September 01, 2011. This is a fixed term tenancy which is due to expire on September 01, 2012. Rent for this unit is \$1,200.00 per month including water, Hydro, heat, cable and internet.

The tenant testifies that the landlord sold the property and the sale had a closing date of April 30, 2012. The tenant states that prior to the sale completing the landlord cashed the tenants rent check for April on the 2nd or 3rd of the month. The tenant testifies that around that time she woke in the morning and found her unit to be freezing cold and there was no hot water. The tenant states she sent the landlord a text message to see what had happened. The landlord replied back saying that the tenant would have to have the utilities put into her own name as the house was sold. The tenant states she replied back to the landlord informing the landlord that these services were included in the tenants rent.

The tenant testifies that the cable and internet services were included in her rent and are detailed as such ion the tenancy agreement. The tenant testifies that her cable and internet were shut off in February, 2012 and these services had to be put into the tenant's name. The tenant seeks to recover these costs for the cable and internet from the landlord. The tenant has provided the cable and internet bills for the months of February, for \$54.33, March for \$44.80 and April for \$44.60. The tenant states she kept the same level of service and used the same internet and cable company.

The tenant testifies that she contacted the gas company but found as the landlord was in arrears with the gas bill the gas company would not let the tenant reconnect the gas and the tenant could not open an account in her name as the tenant was not the owner of the house.

The tenant testifies that she has two small children and was without gas from April 02, to April 11. The tenant testifies that she had to take her children and the three of them had to go and stay at the tenant's ex-husbands one bedroom unit. The tenant states that during this time the tenant was in contact with the landlord's realtor as the tenant did not know who

the new owners were. The realtor managed to get hold of the landlord and told the landlord that if she did not rectify the situation it could affect the sale of the home. The landlord then had the gas turned back on.

The tenant testifies that her children are in Daycare in the area of the tenants unit. Because they had to stay in another part of town the tenant incurred costs in fuel to travel back and forward to Daycare. The tenant seeks to recover the costs for this additional fuel used of \$80.00. The tenant has provided receipts for the fuel.

The tenant also seeks to recover the sum of \$350.00 for compensation for having to live somewhere else for a period of 10 days and the tenant also seeks compensation of \$200.00 for the loss of her facilities and for the upheaval and inconvenience caused by having to stay at her ex-husbands unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the tenant. I refer the parties to s.27 of the Act which states:

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), 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.

Consequently I find the landlord did terminate a service and facility which were essential to the tenant's use of the rental unit when the gas was turned off in April. I therefore find the tenant has established her claim for compensation to the sum of **\$550.00**.

I further find the tenancy agreement states that cable and internet services are part of the rent and therefore I find the tenant has established her claim to recover the sum of **\$143.73** paid to have these services put in the tenant's name.

It is also my decision that the tenant incurred costs to transport her children to Daycare over and above what her usual costs would be as the tenant had to live elsewhere for 10 days. Consequently, I find the tenant has established her claim to recover the sum of **\$80.00** for these additional journeys.

The tenant has applied to reduce her rent due to the loss of services and facilities. The tenant has filed this claim against her former landlord and has not provided details of her new landlord. The tenant's new landlord must honour the fixed term tenancy agreement in place and cannot alter the terms of this agreement unless the tenant agrees to any alterations. The tenant must therefore determine if her new landlords will honour the terms of the tenancy agreement with regards to the cable and internet service and either reinstate this service in the landlords name or reduce the tenants rent accordingly. The tenant is at liberty to file an application against the new landlords if they fail to honour the tenancy agreement.

As the tenant has been successful with her claim I find the tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

A Monetary Order has been issued to the tenant for the following amount pursuant to s. 67 and 72(1) of the *Act*.

Compensation	\$550.00
Additional travel costs	\$80.00
Internet and cable fees	\$143.73
Filing fee	\$50.00
Total amount due to the tenant	\$823.73

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$823.73**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: June 04, 2012.

Residential Tenancy Branch