



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, RR

### Introduction

This was an application by the tenant seeking compensation for loss of services and amenities, including a retro-active and ongoing rent reduction for loss of cable and a limitation of the yard space. The tenant also seeks reimbursement for a veterinarian bill and an order to force the landlord to comply with the Act or agreement.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### Issues(s) to be Decided

- Is the tenant entitled to a rent abatement for loss of value to the tenancy in the past and ongoing?
- Is the tenant entitled to damages?
- Should the landlord be ordered to comply with the Act and Agreement?

### Background and Evidence

The tenancy began on December 1, 2012 with rent set at \$750.00 and the tenant paid a security deposit of \$375.00 and pet damage deposit of \$400.00. There is no written tenancy agreement.

The tenant testified that when she rented the unit, the landlord had verbally agreed to include all utilities in the rent. The tenant testified that this applied to cable and internet services. The tenant testified that in May 2013, the landlord suddenly discontinued supplying the cable portion of the service. The tenant is claiming a loss in value to the

tenancy in the amount of \$50.00 per month and feels entitled to compensation through a retro-active and ongoing rent reduction.

The landlord testified that there was never any commitment in the verbal agreement to include cable services in the monthly rate charged for the tenancy. The landlord testified that she merely shared her own service with the tenant because it existed at the time and the tenant was allowed to access it. However, according to the landlord, once she decided to discontinue her own cable service, there was no longer any opportunity for the tenant to share the service. The landlord stated that there was no overt or implied obligation to furnish cable services to the tenant. The landlord disagrees with the tenant's claim that the tenancy was devalued in the amount of \$50.00.

The tenant testified that, when she rented the unit, it included use of a large yard. The tenant testified that, at the end of October 2013, the landlord suddenly reduced the size of her yard by fencing off a small portion for the tenant's use. The tenant testified that this devalued her tenancy by \$50.00 per month and the tenant is seeking a rent abatement in compensation for the loss.

The landlord acknowledged that the yard was reduced, and stated that this was in response to the fact that the tenant did not promptly clean up after her dog and this caused the landlord some problems as she felt compelled to repeatedly remind the tenant to clean up. The landlord testified that the inconvenience affected her ability to mow the lawn. The landlord testified that the owner discovered more dogs on the property and numerous droppings when he attended to service a plumbing issue.

The tenant argued that she usually cleaned up the yard once per week and pointed out that the additional dogs were only on site for a week because she was looking after them.

The tenant testified that she was mortified to discover that her dog had ingested some rat poison evidently left on the upper patio by the landlord and almost died. The tenant feels that the landlord should compensate her for the veterinarian bills.

The landlord testified that this poison was still in the package and had not been placed on the patio to harm the dog. According to the landlord, although it is not blocked off from the tenant's access, the patio is her own private area.

### Analysis

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are also enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the

landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*].

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that

(i) are required or prohibited under this Act, or

(ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

However, section 13 of the Act requires that a landlord prepare in writing every tenancy agreement entered into and within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

In cases where there is no written contract, oral terms contained in verbal tenancy agreements may still be recognized and enforced. Section 1 of the Act, defines "tenancy agreement" as follows:

***"tenancy agreement"*** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

However, section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if ; (a) the term is inconsistent with this Act or the regulations, (b) the term is unconscionable, or (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it. (My emphasis).

I find that verbal tenancy terms naturally become unclear if they are disputed. In the case of the provision of cable services, I find it clear that the tenant did have access to use the landlord's cable connection. I find that, as long as the landlord still had the service connected, there was an agreement that the parties would both share the service.

I find that the verbal tenancy agreement did not anticipate what would occur, if the landlord's own services no longer existed. However I find that there was no implied or overt agreement that the landlord would purchase cable solely for the tenant to use, if the landlord chose to terminate her own cable service.

Because the tenancy term for cable is not sufficiently clear, I find that it cannot be enforced and therefore the tenant's claim for compensation for the loss of cable must be dismissed.

In regard to the reduced exterior space that had previously been part of the tenant, I find that both parties testified that the yard area was reduced.

Section 27 of the Act states a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement. However a service or facility, other than an essential or material one may be restricted or terminated provided that 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. (my emphasis)

I find that the landlord's action in fencing off most of the yard did devalue the tenancy. However, I accept the landlord's testimony that the frequency of tenant's yard clean-up sessions was not satisfactory to the landlord, nor to the owner. For this reason, I do not find it appropriate to order that the landlord restore the use of the larger yard to the tenant for her dog. That being said, I find it clear that the value of this tenancy has been reduced and I grant a rent abatement of \$25.00 to the tenant for this loss beginning on February 1, 2014..

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find that, under section 32, the tenant must maintain a satisfactory level of hygiene that includes daily removal of dog feces from the yard.

I further find that the tenant is only entitled to have one dog in residence and is not permitted to house additional dogs under the terms of this verbal tenancy agreement.

In regard to the tenant's claim for compensation for the cost of veterinary care, I find that an Applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the claim 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

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. 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, I find that the tenant is required to prove the existence and value of the damage or loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that there is not sufficient evidentiary proof that the dog was deliberately poisoned by the landlord, nor that the landlord's actions were negligent under the Act. For this reason, I find that the tenant's monetary claim has not sufficiently met all elements of the above test for damages and must be dismissed.

However, I find that the landlord's patio should be rendered inaccessible to the tenant's dog in future, for the dog's safety as well as for the landlord's right to privacy.

Based on the evidence and testimony I hereby order that, as of February 1, 2014, the rental rate for this unit is now \$725.00 including utilities and internet service, but not cable service. I further order that the tenant must limit her dog's access to the smaller fenced enclosure, with the expectation that this yard be kept in a sanitary condition in compliance with the Act.

The remainder of the tenant's application is dismissed without leave.

Conclusion

The tenant is partially successful in the application and is granted a \$25.00 per month rent abatement for reduced outdoor space.

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 07, 2014

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Residential Tenancy Branch

