



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, OLC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act, an Order the landlord comply with the Act and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The tenant and landlord made evidence submissions that were 48 and 40 pages, respectively. The only document referenced during the hearing was a copy of the tenancy agreement. The parties were informed that the multiple text communication supplied would only be considered if referenced during the hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation in the sum of \$594.65 for utility and cable costs?

Must the landlord be ordered to comply with the Act?

Is the tenant entitled to filing fee costs?

Background and Evidence

The fixed-term tenancy commenced on February 1, 2012 and effective March 1, 2013 converted to a month-to-month term. Rent is \$1,000.00 per month, due on the 1st day of each month.

The landlord confirmed that as part of the purchase of the home she received a \$500.00 security deposit that the tenant paid in April 2009. There was no dispute that the current tenancy agreement replaced that which the tenant had with the previous owners. A copy of the tenancy agreement was supplied as evidence.

The tenant resides in a lower unit of a house; the landlord lives in the upper unit.

The tenant has made the following claim:

Utility overpayment April – October 2013 \$45.00 per month	\$315.00
Cable costs April – October 2013 \$39.95 per month	\$279.79
TOTAL	\$594.79

The landlord confirmed that the tenant has overpaid utility costs and is entitled to reimbursement; they are included as a term of the tenancy.

The tenancy agreement indicated cable service is included with rent. The tenant said she has some television channels and believes that they may be provided with the internet service, which she purchases. The landlord said she has checked and understands that cable service has not been provided to the tenant.

The tenant requested compensation for the loss of cable service; copies of bills for her internet were not supplied. The tenant said she pays approximately \$65.00 per month. The tenant said she first discussed the cable issue with the landlord around the time she applied for dispute resolution. During the hearing the landlord said she will have basic cable installed in the tenant's unit as soon as a technician can come to the home.

The tenant is a professional harp player and singer. Prior to the current tenancy, the previous home owners did not interfere with the tenant's harp playing and singing. At times the tenant has students attend at the home for lessons. The landlord has been interfering with the tenant's right to quiet enjoyment, by telling her that she needs to limit the times she plays her instrument and sings. The tenant said these requests have interfered with her right to quiet enjoyment of her home.

The landlord said that in September 2013 the sound of singing and harp playing increased, in early October the landlord asked the tenant to phase out the playing and singing. The landlord asked the tenant to refrain from these activities during times the

landlord was at home and that any week day between 2 and 6 p.m. would be fine, as the landlord is not home. Recently the tenant has been much better in respecting this request.

The tenant requested the landlord cease interfering with her right to park along the side of the garage. During the hearing it was established that the tenancy agreement does not include a right to park on the property. This was a term that was included in the previous tenancy, but not the current tenancy. The tenant had been allowed to park along the garage for a period of time during this tenancy; however the landlord now wishes to enforce the term of the tenancy.

The parties confirmed that the tenant does have use of storage in a corner of the garage.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The landlord has agreed the tenant is entitled to return of the utility costs she has paid in the sum of \$315.00; therefore, pursuant to section 67 of the Act I find that the tenant may deduct that sum from the next month's rent due. There was no dispute that the tenant had paid utility costs that were not required as a term of the tenancy agreement.

In relation to the claim for cable costs, I find that the tenant has failed to mitigate the loss she claimed. The tenant has claimed a sum covering a 7 month period of time but did not provide evidence of any attempt to mitigate the loss claimed.

Section 7 of the Act provides:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

Therefore, in the absence of any attempt to mitigate the loss she is claiming, I find that the tenant's claim for loss of cable service is dismissed. Further, the tenant did not provide verification of the sum she has paid for cable service.

Based on the landlord's agreement and the tenancy agreement term that basic cable will service will be provided I find and Order, pursuant to section 62(3) of the Act that this service must be installed no later February 10, 2014.

In relation to the tenant's submission she is suffering a loss of quiet enjoyment, section 28 of the Act provides:

Protection of tenant's right to quiet enjoyment

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

If the landlord is being disturbed by the tenant's harp and singing I find there is no breach of the covenant of quiet enjoyment if the landlord is simply informing the tenant that the activities are causing a disturbance. There was no evidence before me that the landlord has been harassing the tenant or making requests that were unreasonable. It is the responsibility of the landlord to inform a tenant if disturbances are occurring, so that the tenant may adjust their behaviour.

The tenant has taken exception to the landlord's requests, as she plays the harp and sings for a living. I explained to the tenant that the significant factor in any tenancy is whether a disturbance is caused. Whether the level of sound is generated through the playing of a harp, singing or, for example, a radio; the tenant does not have a right to unreasonably disturb the landlord or any other occupant. The landlord has offered the tenant times of the day when she is free to play or sing; which I find is a reasonable accommodation.

As the application has merit I find that the tenant may deduct the \$50.00 filing fee from the next month's rent.

The total deduction from the next month's rent will be \$365.00.

Conclusion

The tenant is entitled to compensation in the sum of \$315.00 for utility overpayment.

The landlord is Ordered to install basic cable service; the claim for compensation is dismissed.

Parking is not included as a term of the tenancy.

The tenant has storage available in the garage.

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 27, 2014

Residential Tenancy Branch

