



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's agent (the agent) confirmed that the landlord received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on April 9, 2014. In accordance with sections 89(1) and 90 of the *Act*, I find that the landlord was deemed served with the tenant's hearing package on April 14, 2014, the fifth business day after its registered mailing.

The tenant testified that he provided his evidence in full to the landlord, including his photographs, by enclosing it with his hearing package and by including it in another package placed in the landlord's mail box. The agent testified that the tenant's photographs were not included in the information provided to the landlord. After some discussion and as the tenant's photographs added little to my understanding of the tenant's application, I advised the parties that I would note the disagreement as to the provision of the tenant's photographs to the landlord in my decision. I am satisfied that the remainder of the tenant's written evidence has been served to the landlord.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for losses and damages arising out of this tenancy? Should an order be issued with respect to a reduction in the monthly rent for this tenancy? Should any other orders be issued with respect to this tenancy?

Background and Evidence

The parties agreed that this periodic tenancy for the basement suite in this owner-occupied three-unit rental property began on or about November 1, 2010. The agent testified that a written Residential Tenancy Agreement (the Agreement) was entered into between the parties and that a copy of that Agreement was provided to the tenant. However, the agent said that he and the landlord, his father who had recently returned from a lengthy hospital stay, had been unable as yet to find the landlord's copy of that Agreement. The tenant testified that he could not recall ever having been provided with a copy of an Agreement. The tenant said that he was uncertain that a written Agreement was ever created and signed. Both parties agreed that the monthly rent is set at \$600.00, payable in advance on the first of each month.

The tenant maintained that the landlord told him from the beginning of this tenancy that his monthly rent included cable television. He testified that for the first year or so of this tenancy, he received cable television in his basement suite by simply connecting to the existing cable outlet. He said that he paid nothing for this service as he understood that this service was provided through his monthly rent payment. He testified that about a year after his tenancy began, he purchased a Shaw Cable box, which enabled him to obtain cable services and internet. He testified that for the past two or three years he has not been receiving the cable service the landlord committed to provide to him as part of his tenancy agreement with the landlord. The tenant entered written evidence of a series of somewhat confusing payments to Shaw Cable, which started as a "new service" on December 6, 2011, and which continued until this service was disconnected on December 17, 2012.

The tenant testified that he has asked the landlord for a restoration of his cable television service a number of times, and entered into written evidence copies of notes he sent to the landlord during the course of this tenancy with respect to the lack of cable television and the lack of heat over an 8-month period of this tenancy. At the hearing, the tenant testified that the lack of heat became apparent in July 2013 and was not restored until the onset of winter in November or December 2013. The tenant said that the agent knocked on his door in the summer of 2013 to let him know that the landlord had decided that cable television would no longer be provided as part of the bundle of services that were included in his monthly rent payment.

The tenant's witness testified that she was in attendance when the agent spoke to the tenant to inform him that cable television would no longer be included in the tenant's rent. She said that this conversation happened about a year ago, around July 2013. She testified that the agent told the tenant that the landlord was previously providing the tenant with cable but was no longer willing to do so. She also testified that she

overheard the agent tell the tenant that the landlord had turned off the heat in this rental unit for the summer months.

The agent testified that cable was never to have been provided as part of this Agreement. The landlord gave no sworn testimony regarding this issue. The agent denied having told the tenant that the landlord would no longer be providing cable television to the tenant. He also said that each of the units in this rental building have individual climate controls and that it would not be possible for the landlord to turn off the heat in only one rental unit as the tenant was maintaining.

The tenant's application for a monetary award of \$1,755.00 included a request for the following items listed in his Monetary Order Worksheet of April 7, 2014:

Item	Amount
Reimbursement for Repairs to Wall	\$35.00
Loss of Value of Tenancy for Lack of Heat for 8 Months @ \$50.00 per month	400.00
Loss of Value of Tenancy for Lack of Cable Television for 3 years @ \$50.00 per month (36 x \$50.00 = \$1,800.00 but shown as \$1,130.00 by tenant on Worksheet)	1,130.00
Stress	200.00
Total of Above Items	\$1,765.00

Analysis

At the hearing, I advised the parties that the \$400.00 security deposit charged by the landlord for this tenancy contravened section 19(1) of the *Act* as it exceeded one-half of the monthly rent for this rental unit. Section 19(2) of the *Act* states that if a landlord accepts a security deposit that is greater than one-half of the monthly rent, "the tenant may deduct the overpayment from rent or otherwise recover the overpayment." As I find that the landlord has charged an amount greater than one-half of the monthly rent for the security deposit, I issue a monetary award in the amount of the \$100.00 overpayment in the tenant's favour, which the tenant can choose to deduct from his next monthly rental payment or obtain as part of the overall monetary Order issued in this decision.

Although the tenant applied for a reimbursement of repairs to his wall, this work was done by his father and no adequate receipt was provided by the tenant to show that he actually incurred losses for which he should be reimbursed. During the hearing, the

tenant testified that he was not expecting to receive a monetary award for the repairs to his wall. I dismiss this portion of the tenant's application without leave to reapply.

In considering the tenant's application for a monetary award for the stress caused by having to raise his concerns about the lack of services with the landlord and his agent, I note that the tenant has not produced any evidence from a health care professional indicating that he has been treated for stress. At the hearing, the tenant said that he has felt stressed about having to deal with these issues. Given the evidence before me, I find no reason to issue a monetary award in the tenant's favour for stress. I dismiss the tenant's application for this item without leave to reapply.

Section 65(1)(f) of the *Act* allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." Section 65 of the *Act* reads in part as follows:

65 (1) *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:*

(c) that any money paid by a tenant to a landlord must be

(i) repaid to the tenant,

(ii) deducted from rent, or

(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;...

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;...

The tenant was somewhat vague and inconsistent in his sworn testimony regarding his claim for a monetary award for the loss in value to his tenancy due to the landlord's alleged withdrawal of heat from this rental unit for an eight month period. At one point in the hearing, the tenant testified that he first noticed the lack of heat in his rental unit in the summer of 2013 and that this problem continued for an eight month period. However, he also testified that the heat in his rental unit was restored by the start of the winter, perhaps by November or December 2013, and has not been a problem since that time. In his written evidence, the tenant submitted a copy of a July 2, 2013 witnessed note sent to the landlord asking the landlord to turn his heat on all the time.

I first note that the period from July 2, 2013 until either November or December 2013 is not an eight month period. In fact, based on the tenant's own evidence and that provided by his witness, the period in question could have been as little as four months. In addition, the time period involved covered summer months and at least some early fall months when any lack of heating that may have occurred in this rental unit in the Lower Mainland would not likely have had the same impact as if this had occurred during the winter months. The agent testified that each of the three units in this property are individually climate controlled and have their own thermostat. The agent said that even if the landlord had wanted to do so, he could not have turned off heat to the tenant's rental unit without doing so to the whole building where the landlord and his family also reside. Even if that were not the case and the landlord turned off the furnace for the summer months, I find little reason to issue a monetary award for the lack of heat during this period of the year. I dismiss the tenant's application for a loss in the value of his tenancy due to the lack of heat in his rental unit without leave to reapply.

I heard conflicting testimony from the parties with respect to whether cable television was supposed to have been provided to the tenant as part of his monthly rent. The tenant said that cable television was to have been included in his rent, while the agent said that this was never the case. The landlord gave no direct testimony on this point.

When disputes arise as to the terms of a tenancy, the written terms of the Agreement signed by the parties is the most effective evidence. In this case, while the agent maintained that there was a signed written Agreement between the parties, the landlord and agent have been unable to date to find that Agreement. At the hearing, the agent maintained that the original shelter information document submitted to the Ministry of Housing and Social Development by the tenant and signed by the landlord on October 27, 2010, entered into written evidence by the tenant, noted that utilities are included in the rental rate. I noted that a shelter assistance application is by no means a written Agreement between the parties. This document is of very limited assistance as utilities may or may not include the provision of cable television. The tenant did not believe that he ever signed a written Agreement for this tenancy and was certain that he had never been provided a copy of that Agreement, if he did sign one.

Section 13(1) of the *Act* requires a landlord entering into a new tenancy after January 1, 2004 to create a written tenancy Agreement. The landlord and his agent had almost seven weeks notice that the primary issue identified in the tenant's application, representing more than half of the tenant's claim involved whether or not cable television was included in this tenancy. While the landlord was hospitalized for some of this time, his son, the agent, has been involved in the management of this rental property and was unable to locate any written Agreement between the parties.

The lack of a written Agreement to refute the tenant's claim leaves only secondary evidence available to determine whether cable television was in fact to have been provided to the tenant as part of his monthly rental payment. The tenant gave undisputed sworn testimony that for the first year or so of this tenancy he had cable television access simply by connecting the existing cable outlet in the rental unit to his television.

The tenant entered into written evidence a copy of a September 28, 2011 letter he sent to the landlord in which he maintained that the landlord had promised to provide him with cable television as part of his monthly rent. The tenant also entered into written evidence a copy of an undated letter that the tenant entered into written evidence in which he advised the landlord that from September 28 to November 21, 2011, he had been repeatedly asking the landlord to repair his cable connection that the landlord had told him was to have been provided as part of his tenancy. The tenant also provided a copy of a September 24, 2013 letter in which he maintained that the landlord had broken his rental agreement by failing to provide him with cable television. Neither the landlord nor the agent disputed receiving these letters.

If there existed a written Agreement between the parties in which cable television was not included within the package of services to be provided to the tenant, I would have expected that the landlord or his agent would have located a copy of that Agreement and provided it to the tenant after receiving any of the above correspondence from the tenant. The absence of any reference to a written Agreement and the failure of the landlord or his agent to produce any written evidence to contest the tenant's claim lends further credibility to the tenant's assertion that cable television was to have been included in this monthly rent.

I find the tenant's cable television bills from December 6, 2011, when he first opened a cable television account with a service provider, until December 17, 2012, when he disconnected that service, are somewhat confusing. However, they do reveal that the tenant did incur monthly costs for cable television service over this period. The tenant testified that after that date he disconnected his cable television service.

I have also taken into account the sworn testimony and written evidence of the tenant and his witness, and the agent's sworn testimony with respect to the tenant's claim that the agent spoke with him in the summer of 2013 (likely in July 2013) about the cable television issue. The tenant and his witness testified that the agent told the tenant at that meeting that the agent had discussed the tenant's request for cable television with his father. They maintained that the agent told the tenant that the landlord confirmed

that the landlord had originally agreed to provide the tenant with cable but would no longer be doing so. The agent denied that he spoke with the tenant about this matter.

Based on a balance of probabilities, I find it more likely than not that the tenant's monthly rent was to have included the provision of cable television when this tenancy began. The tenant gave undisputed sworn testimony that he was able to use the cable television connection in the wall for the first year of his tenancy. When the cable television system changed and a cable box became necessary to maintain service, the tenant did purchase a Shaw cable box and did incur costs to secure a cable service. In the absence of any written evidence from the landlord or any copy of a signed Agreement between the parties, I find that the landlord has been given repeated requests by the tenant to provide cable service that was once provided to the tenant as part of this tenancy agreement. I find that the landlord has basically ignored the tenant's requests and has provided no written evidence to support his claim that cable was not to have been provided as part of the tenant's monthly rent. I also note that the landlord provided almost no verbal testimony of his own with respect to the terms of this tenancy agreement.

Under these circumstances, I find that the tenant has submitted sufficient evidence to entitle him to a monetary Order pursuant to section 65(1)(c) and (f) of the *Act* for the amount of the reduction in the value of his tenancy. I find that this reduction in value occurred as a result of the landlord's withdrawal of the cable television service that I find the landlord had agreed to provide the tenant at the beginning of this tenancy.

Based on the evidence before me, I find that that the tenant has supplied convincing written evidence that this reduction in value commenced by at least December 2011, when he first opened an account with Shaw Cable to obtain cable television service. I find that the tenant is entitled to a monetary award for the loss in value of his tenancy for the 31 months extending from December 2011 until June 2014, the last monthly rent he has paid for this tenancy.

The tenant has applied for a rent reduction of \$50.00 per month for the loss in value of his cable service. However, I find that the most frequent amount billed for what would appear to have been a base level of service during the first four months of the tenant's service contract for cable television was \$38.02. The tenant's subsequent changes to his service contract appears to have reflected some different type of service more directed at pay per view services that would not have a bearing on the landlord's commitment to pay for a more basic type of cable television service. For these reasons, I allow the tenant's claim for 31 months of loss in the value of his tenancy at a monthly

rate of \$38.02. This results in a monetary Order in the tenant's favour in the amount of \$1,178.62.

Pursuant to section 65(1)(f) of the *Act*, I also allow the tenant's application to reduce the amount of monthly rent he is required to pay for this rental unit to reflect the \$38.02 reduction in the value of his tenancy. I order that as of July 1, 2014, the monthly rent for this tenancy is set at \$561.98 ($\$600.00 - \$38.02 = \561.98).

Conclusion

I issue a monetary Order in the tenant's favour under the following terms, which allows the tenant to recover the illegal portion of the security deposit charged at the beginning of this tenancy by the landlord and to recover the loss in value of his tenancy:

Item	Amount
Return of Illegally Charged Portion of Security Deposit for this Tenancy ($\$400.00 - \$300.00 = \$100.00$)	\$100.00
Loss of Value of Tenancy for Lack of Cable Television for 31 months @ \$38.02 per month ($31 \times \$38.02 = \$1,178.62$)	1,178.62
Total Monetary Order	\$1,278.62

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. The tenant may also choose to satisfy this order by withholding this amount from his ongoing monthly rent payments.

I order that the monthly rent as of July 1, 2014 is set at \$561.98, payable in advance on the first of each month.

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 3, 2014

Residential Tenancy Branch

