



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, MT, PSF

Introduction

The tenant applies for an order to cancel a Notice to End Tenancy, a monetary order, and an order that the landlord provide services or facilities required by law.

The landlord confirmed that the notice to end tenancy has been withdrawn by the landlord, and the tenancy is continuing. Accordingly that portion of the claim is dismissed as moot.

Issues to Be Decided

- Does the landlord owe money to the tenant?
- Are there services or facilities required to be provided by the landlord that should be ordered restored?

Background and Evidence

The tenancy of this unit began on March, 2012, and a written tenancy agreement was entered into with the landlord of the property at that time. The current landlord purchased the property April 15, 2013, and the parties entered into a new tenancy agreement at that time. Rent is due on the 1st day of each month in the amount of \$850.00. A security deposit of \$362.40 has been paid.

The tenant contends that her contract specifically states she is entitled to receive cable channels 3 to 57. When her tenancy of a different unit began in 2005, she was receiving more cable stations than she currently receives. She is aware that at some point the service changed over to become a digital service. She wants all the former cable stations (stations 3 to 57) restored.

The tenant also contends that the elevator has been out of service for significant periods in the months of June, July and August. She has marked on her calendar days the elevator was not working. She has never been notified that the elevator was out of service. She relies upon the elevator as she has mobility issues, and requires some

knee surgery. She seeks compensation for the days or partial days in which the elevator was not in operation.

The landlord contends that notwithstanding any notation in the agreement as to specific channels, the cable service provided at all times was the basic package offered by Shaw. At no time has the landlord interfered in any way with the distribution of this service, or paid for any additional service. The landlord is aware that Shaw conducted an audit of each unit in the building and discovered that some units were receiving more stations than the basis service covered. That was corrected by Shaw upon discovery.

The landlord also testified that there is in place a contract for elevator service and maintenance. This requires that the elevators be inspected and serviced on a monthly basis, which results in downtime of a couple of hours each month. Notices are always posted in the building prior to this servicing. There has been no other down time of the elevators over the summer months, as alleged by the tenant. No other tenants have complained about any down time of the elevator.

Analysis

There is conflicting evidence as to the exact cable service that must be provided by the landlord in this tenancy. The landlord submits it is the basic cable service, and the tenant submits it is the specific channels 3 to 57. I note that the tenant acknowledged that the cable service changed at some point to a digital format. Presumably this change could have included a change to at least some of the channel numbers, as it is not uncommon that certain stations are assigned different numbers from time to time by cable companies. The tenant provided no testimony as to the actual networks that were originally received, provided no testimony as to the actual channels now being received, and provided no testimony as to whether she ever began receiving courtesy channels offered by the cable company above and beyond her existing service. The landlord was clear that regardless of which channels were being offered by Shaw, at all times the landlord's obligation under the tenancy was to provide Shaw's basic cable service. This service continues.

Given some lack of clarity in the tenant's evidence, given that the exact channels originally received would most likely have changed numbers over time, and given that the contract stipulates the provision of basic cable service, I accept the landlord's testimony in this regard, and find that the contract requires the landlord to provide basic cable service only. The landlord has no obligation to provide the tenant with additional channels. The tenant's claim in this regard is therefore dismissed.

Regarding the elevator, clearly the landlord must provide a functioning and safe elevator service to the building, as a term (whether written or implied) to the tenancy agreement. However as regarding this claim, there is contradictory evidence before me as to the actual periods of time in which the elevator was not in service. The tenant relies upon her calendar, in which she has noted days when the elevator was allegedly not working. The landlord disputes that these days are accurate, and testified that in fact there has been no lengthy outages as submitted, only brief outages for regular monthly maintenance. I note that there is no supporting evidence for the tenant's contention, such as testimony or statements from other tenants, or evidence from the elevator service provider, that supports her contention of lengthy periods of outage. The burden of proof for this claim lies with the tenant, and under the circumstances of this case I must find she has failed to prove, on a balance of probabilities, that the landlord has not provided the elevator service (subject to reasonable down periods for servicing) as promised under the terms of the tenancy agreement. It is possible as the tenant states, that the elevator has not been operation in more days than contended by the landlord, but it is equally possible that the tenant has been mistaken in some way when making notations on her calendar, or has exaggerated her evidence. As the allegations of the tenant are not proven, this portion of the claim must also be dismissed.

Conclusion

The tenant's claims are dismissed.

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: September 11, 2014

Residential Tenancy Branch

