



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: OLC, MNDC, FF

For the landlord: MNSD, MNDC, MND, MNR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The landlord applied for authority to retain the tenant's security deposit, a monetary order for unpaid rent, damage to the rental unit and for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

Both parties attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

Section 2.12 of the Rules allows the original respondent, the landlord here, to file an application for dispute resolution in response to a related application, and it is termed a cross application. In this case, the tenant filed her application for dispute resolution on January 19, 2015, seeking an order requiring the landlord to comply with the Act and for

monetary compensation for an alleged termination of services. In other words, the application was in contemplation of an ongoing tenancy.

On April 27, 2015, the landlord filed her application seeking post tenancy relief, such as for cleaning and damages and for authority to retain the tenant's security deposit.

I do not find the landlord's application to be sufficiently related to the primary issues listed in the tenant's application, and that is whether the tenant was entitled to a restoration of services and monetary compensation.

I therefore find that the landlord's application was not a cross application as contemplated and defined in the Rules, was improperly added as a cross application, and I therefore dismiss her application, with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the Act and to monetary compensation?

Background and Evidence

The evidence shows that the landlord and this tenant's roommate "PS" signed a written tenancy agreement, showing that the 1 year, fixed term tenancy started on June 1, 2014, monthly rent began at \$1000.00 for the first 6 months, and was increased to \$1050.00 for the subsequent 6 months. The rental unit was part of a duplex with the other suite being occupied by the landlord. The tenant here was listed as a tenant on the written tenancy agreement.

The tenant submitted further that PS vacated the rental unit in October 2014, but that she continued on living there until on or about March 23, 2015, when she vacated the rental unit.

In support of her application, the tenant submitted that cablevision was included as part of the monthly rent and that the tenants have never been provided cable service at all from the landlord, despite numerous requests to the landlord. The tenant submitted further that basic cable costs approximately \$75.00, and therefore she should be compensated the amount of \$600.00, the amount of her monetary claim, for loss of cable from June through the present, as listed on her application filed in January 2015. The tenants submitted a copy of the written tenancy agreement showing that monthly rent included "cablevision" and further stated that there were no cable outlets in the rental unit.

The tenant sought to have the landlord provide the cable service through her application; however, the tenancy has now ended.

In response to the tenant's application, the landlord submitted that she had offered PS to use the service she had with another cable company, and provided a password for their use. Sometime in July 2014, the landlord's cable provider attended the residential property to see what could be done about the lack of cable; however, the tenant declined the offer as they had signed with another company.

The landlord confirmed that cable was not provided to the tenants, but that basic cable was only \$39.90 + tax, as shown by her evidence from the cable provider.

In rebuttal to the landlord's response, the tenant submitted that they were forced to provide their own cable service when the landlord refused to provide a cable service and pointed out that when the landlord spoke of a password, cable does not work with a password.

Analysis

In the case before me, I find that the evidence shows that this tenant was a co-tenant under this tenancy agreement, even though she did not originally sign the tenancy agreement. The tenant remained in the rental unit beyond when PS vacated and I therefore find the evidence shows that a new tenancy formed with this tenant and the landlord under the same terms and conditions after PS departed, as there was no evidence to the contrary.

In the case before me, it is clear from the written tenancy agreement that the landlord was required to provide for cablevision, which, without further clarification or description, I find would be basic cable. I also find that the landlord failed to provide cable service to the tenants from the inception of the tenancy.

Section 27(1) of the Act states that a landlord must not terminate a service or facility if it is essential to the tenant's use of the rental unit or the service is a material term of the tenancy agreement.

I am not persuaded that cable service is essential to the tenant's use of the rental unit, as the tenant remained in the rental unit from the beginning of the tenancy without cable being provided by the landlord.

Section 27(2) states that if the service is not covered under Section 27(1) the landlord may terminate that service if the landlord gives 30 day's written notice, in the approved form, of the termination and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination of the service.

In the case before me, I find the landlord failed to provide the tenants the required cable service from the beginning of the tenancy, or June 2014, until March 23, 2015, without reducing the rent in an amount equivalent to the reduction in value. I therefore find the tenant is entitled to monetary compensation for the amount of the reduction in value for

the length of the tenancy, or in this case, \$39.90 + tax per month, as the tenant failed to support that basic cable costs \$75.00.

I therefore find the tenant is entitled to a monetary award of \$419.00, comprised of monthly basic of \$39.90 + 5% tax, or \$41.90 from June 2014 through March 2015. I also award the tenant reimbursement of her filing fee of \$50.00 paid for this application, for a total monetary award of \$469.00.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$469.00, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation is granted in part as she has been granted a monetary award of \$469.00.

The landlord's application is dismissed, with leave to reapply.

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: August 10, 2015

Residential Tenancy Branch

