



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed January 21, 2016 wherein the sought a Monetary Order for compensation for amounts paid for cablevision during his tenancy.

Both parties appeared at the hearing. The Tenant was assisted by an Advocate, L.O., and the Landlord's son, J.L. presented on behalf of the Landlord. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Tenant entitled to monetary compensation for the amount he paid for cablevision during the tenancy?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which provided as follows. The tenancy began September 2, 2011 for a fixed one year term. Monthly rent was payable in the amount of \$525.00. Clause 3 of the tenancy agreement provided that basic cablevision was included in the monthly rent.

L.O. testified on behalf of the Tenant. She stated that in November or December of 2012 the Landlord informed the Tenant that he would no longer pay for cablevision. Commencing January of 2013 the Tenant began paying his own cable and did so until September 2015. In the within application he sought a monetary order in the amount of \$1,487.29 for cable he paid for during this time. The Tenant provided a monetary orders worksheet which provided details as to the monthly amounts charged during that time period.

L.O. testified that the Tenant attempted to speak to the Landlord about the fact he was now expected to pay his cable despite it being included in rent pursuant to the tenancy agreement. She further stated that the Tenant asked the Landlord to reduce the rent by the amount he was paying for cable, and the Landlord refused.

When I asked L.O., why the Tenant did not bring his application forward sooner, L.O. stated that the Tenant was concerned that if he raised this issue he would be subject to rent increases as the Landlord told him if he didn't pay for his own cable he would increase his rent.

The Tenant was not aware that the Landlord's threat to increase the rent would have been less than the amount he was paying for cable and only became aware of this when he spoke with the organization which employs the Advocate.

L.O. testified that the Tenant moved out of the rental unit December 31, 2015.

J.L testified on behalf of the Landlord. He confirmed that the rental agreement provided that the monthly rent was to include cablevision. He stated that in November or December 2012 the Landlord and the Tenant, as well as another renter met and discussed the issue of the cable. J.L. stated that at that time the Landlord was concerned because the Tenant was incurring excessive pay per view charges. He stated that the parties agreed that the renters would then be responsible for paying their own cablevision and the Landlord would not increase the rent. Introduced in evidence was a letter from the other renters confirming this alleged agreement.

J.L. stated that as per the agreement the Landlord did not increase the rent for the balance of the tenancy.

The Tenant's advocate submitted that the rental unit was the top floor of a house with three units and therefore the cable was split three ways. The Tenant's advocate stated

that the pay per view charges were not related to the Tenant as the Tenant did not have a cable box and was therefore not able to rent movies.

The invoices introduced in evidence relating to the pay per view charges indicate they were for the “upper” unit.

Analysis

The Tenant seeks compensation for amounts he paid for his cablevision during the years 2013, 2014 and 2015. The Landlord alleges there was a verbal agreement between him and all the renters in the rental building that the cable would no longer be covered by the rent and that he would not increase the rent during the balance of their tenancy.

There is no dispute that the residential tenancy agreement provided that cablevision was to be included in the rent payment.

Section 27 of the *Residential Tenancy Act* provides that a Landlord must not terminate a service without a corresponding rent *reduction*. This section reads as follows.

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if 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.

The above section is mandatory. In terminating the cablevision without a corresponding rent reduction, the Landlord has breached section 27.

The alleged agreement between the Landlord and the Tenant was not reduced to writing. In any case, I find that the terms of this proposed agreement were an attempt

by the Landlord to contract out of section 27 of the *Act* and are therefore of no force and effect.

Section 5 of the *Act* provides that the parties cannot contract out of the *Act*. For greater clarity I reproduce that section as follows.

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Accordingly, I grant the Tenant the **\$1,487.29** claimed for cable charges he paid during the years 2013, 2014 and 2015. The Tenant is granted a Monetary Order for this sum and must serve the Order on the Landlord. If necessary, the Order may be filed and enforce in the B.C. Provincial Court (Small Claims Division) and enforced as an Order of that Court.

Conclusion

The Tenant is granted the \$1,487.29 claimed for cable charges he paid during the years 2013, 2014 and 2015 during which time the residential tenancy agreement provided the Landlord was to provide this service and that the cost was included in his rent.

The Landlord's attempt to negotiate out of section 27 of the *Act* is of no force and effect.

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: July 22, 2016

Residential Tenancy Branch