



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RR, FF

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*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and landlord's agent, KO ("landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenant's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application.

The landlord testified that on November 17, 2016 she forwarded the landlord's 17 page evidence package via registered mail to the tenant. The landlord provided a Canada Post tracking number as proof of service. The tenant testified that he did not receive the landlord's 17 page evidence package. Section 90 of the *Act* deems a party served with documents five days after registered mailing even if the recipient does not pick up the mail. Based on the testimony of the landlord and in accordance with sections 88 and 90 of the *Act*, I find that the tenant has been deemed served with the 17 page evidence package on November 22, 2016, the fifth day after its registered mailing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on December 1, 1995 on a month-to-month basis. Rent in the amount of \$1,212.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$200.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant testified that cablevision was included in his rent since his tenancy started in 1995 and the landlord terminated this service on September 15, 2015 without 30 days' notice or compensation. The tenant indicates the replacement cost of the terminated cable service is \$72.00 per month plus taxes. The tenant has provided a cable invoice dated September 24, 2015 to substantiate this monthly cost. The tenant seeks an \$81.00 monthly rent reduction from August 15, 2015 until December 30, 2016 for a total of \$1,336.00. Additionally the tenant estimates he spent 20 hours addressing this issue with an hourly rate of \$50.00 for a total of \$1,000.00. In total the tenant seeks \$2,336.00 plus administrative penalties.

In reply, the landlord testified that the signed tenancy agreement does not indicate cable was a service included in rent. In May 2015, the cable provider contacted the landlord and gave the landlord the option to continue the bulk cable service or discontinue it. At this time the landlord determined that because only eight tenants remained on the bulk account the landlord would discontinue this service. Only three of the eight tenants that remained on the bulk cable account had tenancy agreements which included cable. The landlord testified that those three tenants were given 30 days' notice and a monthly rent reduction of \$35.12. The landlord provided a copy of the bulk service invoice from the cable provider which indicates the monthly rate of \$280.96. It is the landlord's position that the tenant was not given the same notice or rent reduction because based on his tenancy agreement he was never entitled to cable.

Analysis

Under section 27(2) of the *Act*, a landlord may terminate or restrict a non-essential service if the landlord gives 30 days written notice and reduces the rent in an amount that is equivalent to the reduction in value of the tenancy agreement.

In the case before me, I find that although the tenancy agreement did not stipulate cable was included in the rent, cable was provided by the landlord for nearly twenty years at no cost to the tenant. As the cable was provided, particularly for that duration, I find the landlord was obligated to give 30 days' notice and reduce the rent. As this has not occurred I order the landlord to reduce the rent.

The landlord calculated the value of basic cable by dividing the monthly rate of \$281.86 by the eight tenants receiving the service for a monthly rate of \$35.12. Upon review of the tenant's evidence it appears he has obtained classic cable, not basic cable. As the tenant failed to support that basic cable costs \$81.00, I find the tenant is entitled to monetary compensation for the amount of the reduction in value, or in this case \$35.12.

Based on the above, I find the tenant is entitled to a monetary award of \$597.04, comprised of monthly basic cable of \$35.12 from September 2015 to January 2017. I order a rent reduction from this day forward, in the amount of \$35.12. The current rent of \$1,212.00 is reduced and set at \$1,176.88 for this rental unit.

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

In relation to the tenant's claim for \$1,000.00 for his time, I find the tenant has failed to satisfy the burden as he has provided insufficient evidence to establish the amount or value of his time. For these reasons I dismiss this portion of the tenant's claim.

At the hearing, the tenant requested that an administrative penalty, pursuant to section 94.1 of the *Act*, be levied against the landlord. I note that I do not have the authority to administer administrative penalties against the landlord, only the Director of the RTB

does. Therefore, the tenant must apply for such a penalty through the required procedure as outlined in the *Act*.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application for a total award of \$697.04.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$697.04**.

I order a rent reduction from this day forward, in the amount of \$35.12. The current rent of \$1,212.00 is reduced and set at \$1,176.88 for this rental unit.

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 17, 2017

Residential Tenancy Branch