



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RR FF

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for compensation for loss or damage pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenants:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The landlord confirmed service of the tenant’s applications including evidence on file.

Preliminary Issue – Service of Landlord's Application

The tenant objected to the landlord’s application being heard in this hearing as it was not served in accordance with the Act, and she did not have sufficient time to respond to it. The tenant testified she did not receive the landlord’s application until September 20, 2017 and it was found slipped under her door. The landlord testified he attempted to serve the application in person but the tenant did not answer the door so it was slipped under the door of the rental unit.

As the landlord's application was not served in a method permitted under the Act and it was nevertheless received by the tenant less than 14 days prior to this hearing, I dismiss the landlord's application with leave to reapply.

Issues

Is the tenant entitled to a monetary award for compensation for loss or damage?
Is the tenant entitled to an order allowing the tenant to reduce rent for services or facilities agreed upon but not provided?

Background & Evidence

The tenancy for this two bedroom apartment unit began on March 1, 2014 with a monthly rent of \$1000.00 payable on the 1st day of each month. The current monthly rent was increased to \$1093.74 effective August 1, 2017. The tenancy agreement includes cablevision as a "service or facility" included in the rent.

The tenant is claiming monetary compensation in the amount of \$51.52 per month for the period of November 19, 2015 to September 30, 2017 for a total claim of \$1150.61. The tenant claims the landlord failed to provide cablevision services for this period as agreed to in the tenancy agreement. The tenant advised at the outset of the hearing that she was reducing her claim from the original amount of \$1527.20 as she just recently received some current information from her cable provider that only the basic cable services were included for this period in question. However, she testified that the cable provider had made an error and provided additional channels. The tenant is also seeking a future rent reduction for the value of the cablevision services.

The landlord testified that prior to the tenant moving into the rental unit, the building was provided cable services which were renewed on an annual basis with the same provider. Only basic cable services were provided to the tenant as well as other tenants in the building. The cable was not supposed to be included in the tenancy agreement was done so by mistake of the previous building manager. The landlord honored the tenancy agreement and provided cable services. In 2015, the cable provider did not renew their agreement with the landlord and the landlord secured a new agreement with another provider to provide cable services in the building. The tenants were provided written notice that the new cable provided would be making the switch over. The tenant refused to switch over as she was happy with the existing provider. Other tenants in the building have switched over to the new provider without any concerns.

The tenant replied that she refused to switch to the new provider as she believed at the time she was getting a significant reduction in channels provided and the new provider was also requiring a \$200.00 deposit for a PVR box.

The landlord submits the deposit was only required if tenants wished to increase services from the basic package which did not require a deposit.

Analysis

Section 27 of the Act provides as follows:

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.

I find the landlord did not terminate or restrict a service provided for in under the Act or the tenancy agreement. Rather, the evidence of both parties suggests that the landlord offered the same cablevision services just with an alternate provider. The tenancy agreement does not restrict the landlord from providing the same services with another provider. I accept the landlord's evidence that he secured and offered similar cablevision services to the tenant with an alternative provider but she refused and continued to utilize the existing provider at her own expense. I find the tenant incorrectly believed she would be receiving a reduced service by switching providers. Both providers were providing basic cable services through the landlord. If the existing provider, mistakenly provided additional services or channels at no charge, this does not mean the landlord would then be required to provide the equivalent of these services through any alternate provider. I find the tenant voluntarily gave up the cablevision services offered by the landlord approximately two years ago. The tenant

has since continued to pay for her own services. The tenant may not now make a claim for compensation two years after the fact.

The tenant's application for monetary compensation and a rent reduction is dismissed without leave to reapply.

Conclusion

The tenant's application is dismissed without 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: October 03, 2017

Residential Tenancy Branch