



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR; MNDC; FF

Introduction

This is the Tenant's Application for Dispute Resolution seeking to cancel a Notice to End Tenancy for Unpaid rent issued October 12, 2017 (the "Notice"); compensation for damage or loss; and to recover the cost of the filing fee from the Landlord.

Both parties attended the Hearing and gave affirmed testimony.

It was determined that the Tenant mailed the Notice of Hearing documents to the Landlord, by registered mail, on October 28, 2017. It was also determined that the parties exchanged their documentary evidence.

The address of the rental unit was not complete on the Tenant's Application. Therefore, the address was amended to include the word "basement".

The Landlord provided written submissions, indicating that he was seeking a monetary award for unpaid rent; however, the Landlord has not made his own Application. I advised the Landlord that he is at liberty to make his own Application, but that the only matter before me is the Tenant's Application.

Issue(s) to be Decided

Is the Notice a valid notice to end the tenancy? Is the Tenant entitled to compensation for overpayment of utilities?

Background and Evidence

A copy of the Notice was provided in evidence. It is for unpaid rent for the month of October in the amount of \$1,400.00. The Notice is not signed by the Landlord.

The Landlord provided page 2 of the tenancy agreement and the addendum. The Tenant did not provide a copy of the agreement. Because of the nature of the Tenant's Application, I ordered that the parties provide a full copy of the agreement to the residential tenancy branch by November 26, 2017. I also advised that I would be providing my Decision based on whatever copies, if any, I was provided after the three day period had lapsed.

The Tenant gave the following testimony:

The Tenant stated that in September, 2016, she had an agreement with the Landlord that rent could be paid on the 15th day of each month. The Tenant provided a copy of an unsigned note dated September 8, 2016, in evidence.

The Tenant testified that she was not provided with an internet password, and that she had not carefully read the tenancy agreement before signing it. Therefore, she submitted that she was unaware that rent included internet. The Tenant has been paying for her own internet and seeks to recover that cost from the Landlord, as follows:

Initial contract for one year from January, 2016 @\$45.00/month	\$540.00
Contract for following year from January to September, 2017 (9 months @\$73.00/month)	<u>\$657.00</u>
TOTAL	\$1,197.00

The Tenant stated that she has also been overcharged for cable. The Tenant acknowledged that cable was not included in the rent, but stated that the Landlord arranged for cable hook up and was charging her \$75.00 a month since the beginning of the tenancy. The Tenant submitted that she had basic cable only and that the actual cable costs were much less than what the Landlord had charged her for. She testified that she was advised by the cable provider that basic cable was \$33.00 per month ("promo" rate) for the first 6 months, and therefore she paid \$42.00 more than she should have paid. The Tenant stated that for the following 6 months, she paid \$90.00 per month, but she was advised by the cable provider that it would have cost her \$40.00 per month and therefore she paid \$50.00 per month more than she should have paid. The Tenant submitted that she paid an additional \$184.00 more than she should have paid for the following 8 months (\$23.00 per month) because the rate was \$67.00 per month after the initial 12 months. The Tenant also provided a complicated and confusing calculation in her documentary evidence. The Tenant calculated and that she has overpaid \$736.00 in total for her cable.

The Landlord gave the following testimony:

The Landlord testified that he had agreed that the Tenant could pay rent late in September, 2016, because she was having some personal problems surrounding her mother's health issues. He stated that it was not his intent that all future rent would be due on the 15th of each month. The Landlord acknowledged that he and his wife provided the Tenant with the unsigned document that the Tenant provided in evidence dated September 8, 2016. The Landlord asked that I make a determination with respect to what day of the month that rent is due.

The Landlord stated that he wrote the password to the internet on the tenancy agreement. Later on in the Hearing, he stated that he verbally gave the password to the Tenant for her to write down.

The Landlord testified that he charged the Tenant \$75.00 per month for cable because of the cable provider's cancellation policy. The Landlord testified that he does not require cable and that he watches Netflix instead. He agreed that he did not provide the Tenant with a copy of the cable bill, but stated that he provided the account "verbally".

The Landlord provided copies of text messages between the parties with respect to setting up cable for the Tenant, advising of the need for a 2 year contract at a reduced rate for the first year, and communications with the Tenant with respect to which package to get, etc. Because the Landlord did not have cable, he stated that the cable provider required either a 2 year contract (which the Landlord would be required to honour, whether or not the Tenant remained in the rental unit) or a \$300.00 installation fee in lieu of the contract. Therefore, the Landlord was charging the Tenant \$15.00 a month to cover a cancellation fee if the Tenant moved out before the contract expired. The Landlord stated that he would agree to pay the Tenant \$285.00 for 19 months of overpayment in the amount of \$15.00 per month.

Analysis

Section 52 of the Act requires that a Notice to End Tenancy must be signed by the party giving the notice in order to be valid. I find that this Notice is not a valid notice to end the tenancy as it is not signed by the Landlord. The Notice is therefore cancelled. I advised the parties of this part of my Decision orally on November 23, 2017.

It is important to note that both parties provided a full copy of the tenancy agreement to the Residential Tenancy Branch. The Landlord provided a copy on November 23, 2017. The Tenant provided a copy on November 27, 2017. The copies of the agreement are identical, with the exception that the Tenant's copy includes the following notation at the bottom of page one of the agreement:

Received \$700 Jan. 14, 2016.

This tenancy began on January 15, 2016. It is a one year fixed term tenancy which may continue on a month-to-month basis or another fixed length of time at the end of the term. Monthly rent is \$1,400.00, due "each month to the landlord on the first day of the rental period which falls on the [day not disclosed] day of each month". A security deposit in the amount of \$700.00 was required to be paid on or before February 1, 2017. Rent includes water, electricity, heat, stove and oven, refrigerator, window coverings, laundry, garbage collection, street parking and wireless internet.

The Tenant signed the tenancy agreement. She stated that she did not read it, but it is clear that internet was included in the rent. In any event, the Tenant did not advise the Landlord that she was paying for internet until September, 2017. I find that the Landlord could not correct the problem if he did not know that the problem existed until September, 2017 and therefore I dismiss this portion of the Tenant's Application.

It was not clear why the Landlord arranged for the cable services, paid the cable bill and then charged the Tenant for the cost of the cable. However, that was the arrangement made between the parties at the beginning of the tenancy.

This is the Tenant's Application and therefore the onus is on the Tenant to provide sufficient evidence to support the amount of her claim with respect to cable. I found it confusing and difficult to follow her calculations. Furthermore, the Tenant did not provide clarification from the cable provider with respect to the rate she was paying for the service she was provided and therefore the amounts she is claiming she was overcharged. I find that the Tenant has not provided sufficient evidence to support the amount of her claim. However, the Landlord did acknowledge that he charged the tenant an additional \$15.00 a month to cover a "cancellation" fee that may or may not actually occur. Therefore, I allow the Tenant's claim in the amount of \$285.00 for over payment of cable.

The Landlord's letter dated September 8, 2016, states, in part:

We will adjust accordingly with our finances and give you the flexibility you need. Please try to have the balance of the rent paid in fully by mid-month. We will stop asking you about rent as long as you keep us posted if you are behind pass mid-month."

[Reproduced as written.]

Based on the testimony of both parties, and the document provided by the Tenant, I find that the Landlord agreed to forego payment of rent until the 15th of each month ("mid-month"). There was no indication in the Landlord's letter that this was a temporary arrangement, and if so, for how long.

The Tenant's Application had some merit and I find that she is entitled to recover the cost of the \$100.00 filing fee from the Landlord.

Conclusion

The Tenant is hereby provided with a Monetary Order in the amount of **\$385.00** for service upon the Landlord. This Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). In the alternative, the Tenant may deduct \$385.00 from future rent due to the Landlord, in which case this Order becomes null and void.

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: December 20, 2017

Residential Tenancy Branch