



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND MNDCT RR

Introduction:

Both parties attended the hearing and gave sworn or affirmed testimony. The landlord confirmed the tenant served the Application for Dispute Resolution by registered mail. I find that the landlord is legally served with the Application according to section 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order or rent rebate pursuant to Sections 27, 65 and 67 for withdrawal of a service or facility;
- b) To dispute a rent increase which was based on the unreduced rent before the facility agreed upon (cablevision) was withdrawn.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that the landlord withdrew a facility or service agreed upon without a corresponding reduction in rent? If so, to how much reduction are they entitled? Has the tenant proved on the balance of probabilities that they had an illegal rent increase? If so, to how much compensation have they proved entitlement?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced March 31, 2013, that monthly rent was \$950 and a security deposit of \$875 and pet damage deposit of \$200 was paid. The lease is in evidence. The lease included cablevision in the rent.

In 2016, the present landlord took over the property and the tenant said the old landlord told her the new one was not interested in supplying cable service. She said she told him that her rent should be reduced then. She had cable service for 3 months under the new landlord but then he put up an antenna which did not provide reliable service

and had greatly reduced channels available. She said she complained at the time and he said if she dropped the problem, he would not increase the rent. Her rent at that time was \$973.75 after the increase in September 2015 (\$23.75). She thought he meant that the rent would not be increased during her tenancy but the landlord said he just meant for 2016. It was not increased in 2016.

The landlord provided OTA service with an antenna and when the tenant complained of the erratic service, he installed an amplifier in December 2017 which must be plugged in. She has to pay the extra hydro to use it. Since the removal of the cablevision, she has been renting shows and DVDs from the library. She said the rentals are 90% TV shows which would be available on cablevision. The landlord said the tenant's first complaint was in September 2017 when he presented a new lease. That is also when he served a Notice of Rent increase of 4% to commence on January 1, 2018. He said he offered to reinstall the cablevision but there was no response from the tenant. She gave him a formal letter on December 31, 2017 requesting he restore the cablevision or compensate her. He replied he could order it when an installation time was worked out but he said she did not respond. She did not accept his offer to restore the service.

The tenant said she is not interested in having cablevision installed now as she has adjusted her life without it but she wants compensation and/or a rent decrease. The landlord came to an agreement with other tenants in the property and supplies internet to them. She has spotty Wi-Fi.

Both parties provided evidence of different costs associated with the provision of cablevision. The tenant said the landlord's evidence on that was based on a package, not a single TV.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

The tenant requested I comment on legal rent increases, the timing and % allowed. I find the legal increase in 2017 was 3.7% and in 2018 is 4%. Since the tenant's latest rent increase took effect on January 1, 2018, the legal increase that applies is 4%. I note it is not the service date of the 3 month notice (September 2017) that determines the legal rate but when the rent increase takes effect. I find her rent was legally increased by 4% pursuant to section 43 of the Act on January 1, 2018.

Section 27 of the Act provides a landlord may not terminate or restrict a service or facility if 27(1) (b) providing the service is a material term of the tenancy agreement. Section 27(2) states a landlord may terminate or restrict a service or facility other than the one referred to in subsection (1) if the landlord gives 30 days written notice and (b) reduces the rent in an amount that is equivalent to the reduction in value of the tenancy agreement resulting from the termination or restriction.

Residential Tenancy Policy Guideline 22 states:

Where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent.

D. BURDEN OF PROOF

Where the tenant claims that the landlord has restricted or terminated a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant. There are some issues which must be addressed by the landlord and tenant including:

- *whether it is a service or facility as set out in Section 1 of the Legislation;*
- *whether the service or facility has been terminated or restricted;*
- *whether the provision of the service or facility is a material term of the tenancy agreement;*
- *whether the rent reduction reflects the reduction in the value of the tenancy.*

I find the issues that are most relevant to this situation are:

1. Was the service or facility terminated or restricted?
2. Was there a rent reduction reflecting the reduction in value of the tenancy?

I find section 1 of the Act defines a service or facility as including cablevision. I find it was a material term of the tenancy agreement as the tenant relied on it for entertainment for her son and herself and the landlord considered it sufficiently important to negotiate a substitute for it. I find in August 2016, the parties sent text messages. I find the evidence is that the landlord proposed using a substitute service for cablevision, which is OTA. In the evidence he submitted, the advertisement for this service claims it and digital TV is superior as it does not have the compression of cable TV. It states it has over 20 channels in the City area. I find the evidence is that the tenant agreed to this change and the landlord agreed not to raise her rent for 2016 (the legal increase was 2.9%). The rent was raised by 3.7% in 2017 and the tenant did not dispute it. However, I find she was unhappy with the problematic service of OTA and complained to the landlord in September 2017 after the Notice of Rent Increase was served. I find the landlord installed an amplifier in December 2017 to improve the service of OTA but the tenant said she is now required to pay for the hydro for this outlet while hydro was included in her lease agreement.

I find the landlord offered to install the cablevision service again in September 2017 (email evidence provided) but the tenant did not respond. There were various options sent by email in September 2017, including a possibility of a provider who provides

movies on demand at a cost of \$8.99 to \$13.99 a month. The landlord provided copies of screenshots of 3 major providers of cablevision at costs ranging from \$10 month to \$25 month. He contends the tenant is just trying to freeze her rent with no future increases. He states he would prefer to restore the cablevision service and states the OTA service that was provided was worth something.

The tenant provided internet information that cablevision service ranged from \$50 to \$53.33 plus the cost of the PVR rental, digital box rental and installation fee. She requests compensation of \$57.86 x 20 months (September 2016 to May 2018) for a total of \$1157.29 as rent rebate. She is not interested in having cablevision restored at this time.

Based on the weight of the evidence submitted orally or in documents, I prefer the evidence of the landlord regarding the 2016 year. I find the tenant agreed to provision of the OTA service by text and the landlord agreed to not raise her rent in that year. Therefore, I find the tenant not entitled to any rent rebate for the year September 2016 to September 2017. I find insufficient evidence that the landlord intended or agreed that this agreement would apply to future years.

In respect to the year commencing September 2017, I find the tenant complained about the inadequacy of the OTA service. I find the landlord made several efforts to accommodate her by offering to re install the cablevision service but the tenant did not indicate she wanted this in her emails or texts. I find she was focussed on arguing that the 2016 agreement meant the landlord had frozen her rent at that level with no further increases. I find the landlord installed an enhancer to the OTA service but the tenant contends she should not have to pay for the electricity to feed this enhancement.

As the landlord provided the substitute OTA service and the tenant agreed to it in 2016, I find the landlord did not terminate the service but provided an alternate which its advertisements claim is superior to cablevision. However, I find the weight of the evidence is that it is restricted in its service to fewer channels. I find the weight of the evidence is that the tenant did not accept the offer of restoring cablevision from September 2017 until she gave him a formal letter in December 2017 and in fact, she stated she was not interested in restoring service in the hearing; therefore, I find the landlord was not responsible for restricting the service during September 2017 to December 2017..

I find the tenant provided insufficient evidence as to cost of restoring cablevision as she did not have an actual service provider quote on it. Therefore, I use the landlord's and tenant's evidence that \$25 a month is likely the cost of a stand alone but the landlord states he can get the bonus discounts from the providers as he has internet already from them which would mean less than \$20 month cost to him. Considering the fact that the tenant has had OTA television supplied as an alternate, I find compensation for her reduced service is reasonable at \$15 a month plus \$5 a month for additional hydro costs for the OTA enhanced antenna..

I find the tenant is entitled to \$20 a month rent rebate from January 2018 to May 2018 which totals \$100. I find in addition, her rent is set at \$992.70 as of January 1, 2018 and any subsequent rent increases are to be based on this rent. To give effect to this finding, the following orders are issued.

Conclusion:

I find the tenant entitled to \$100 in rent rebate and set her rent at \$992.70 as of January 1, 2018 with future legal increases in compliance with section 43 of the Act. Her filing fee was waived.

I HEREBY ORDER that the tenant may deduct \$100 from her rent.

I HEREBY ORDER that the tenant's rent is set at \$992.70 a month effective January 1, 2018 and may be legally increased yearly in compliance with section 43 of the Act.

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: May 22, 2018

Residential Tenancy Branch