



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

PSF, RPP, MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to provide services; for an Order requiring the Landlord to return personal property, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on February 20, 2019 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch were sent to the Landlords, via registered mail. The female Landlord stated that these documents were received and that she is representing the male Landlord at these proceedings. As these documents have been received, they were accepted as evidence for these proceedings.

On March 07, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was mailed to the Tenant on March 07, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but is only referenced in this written decision if it is relevant to my decision.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for not being provided with cable service?
Is the Tenant entitled to compensation for spoiled food?
Is there a need to issue an Order requiring the Landlord to return personal property?

Background and Evidence:

The Landlord and the Tenant agree that the tenancy began on October 01, 2017; that rent of \$1,000.00 was due by the first day of each month; that the Tenant did not have the right to enter the unit after September 20, 2018; and that at a previous dispute resolution proceeding the Tenant has been ordered to pay rent for September of 2018.

The Tenant stated that prior to the start of this tenancy she was told that basic cable would be provided to her as a term of the tenancy and that she signed an addendum to the tenancy agreement that declared cable was included with the rent.

The Landlord agreed that the parties signed an addendum to the tenancy agreement which declared that basic cable was included with the rent. She stated that this was an error and that prior to the start of the tenancy the Tenant was informed that cable was not included with the rent.

The Landlord and the Tenant agree that a second addendum to the tenancy agreement was signed on April 29, 2018, which makes no mention of cable being included in the rent. The female Landlord stated that the reference to cable was removed because the Landlord realized it had been inadvertently included on the first addendum.

The Tenant stated that when she signed the addendum on April 29, 2018 she was not aware that the provision regarding cable had been removed from the addendum. She stated that she signed the addendum because some furniture mentioned on the original addendum had been removed from the unit. She stated that she did not notice that the provision regarding cable had been removed from the second addendum until sometime in May of 2018.

The Landlord submitted a bill for cable vision that indicates basic cable is \$37.93 per month. The Tenant is seeking compensation for being without cable for seven months, in the amount of \$265.51.

Copies of the two addendums were submitted in evidence.

The Tenant stated that the remainder of her \$400.00 claim, which is \$134.49, is for perishable items in her refrigerator that were destroyed when her refrigerator was unplugged. She stated that contractors making repairs in the rental unit unplugged the refrigerator sometime in the first week of September of 2018 and she did not realize it had been unplugged until the second week of September when she attended the unit to empty the refrigerator. She estimates the perishable items had a value of \$200.00, although she did not submit an itemized list of the items or proof of their value.

The female Landlord stated that there were contractors in the rental unit making repairs but she does not know if they unplugged the refrigerator. She stated that she understands some perishable items in the refrigerator were destroyed, although she does not know the value of those items.

The Landlord and the Tenant agree that the Landlord still has some personal possessions belonging to the Tenant. The parties agreed to meet at a well-known coffee/donut shop on March 16, 2019 at 11:00 for the purposes of returning these items.

Analysis:

On the basis of the addendum that was signed prior to the start of the tenancy I find that cable was to be provided with the rent. I find this evidence to be more compelling than the Landlord's testimony that prior to the start of the tenancy the Tenant was verbally informed that cable was not included with the rent, as the Tenant disputed this testimony. I therefore find that cable was to be provided with the rent.

Section 27(1) of the *Residential Tenancy Act (Act)* stipulates that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement. As there is no evidence that providing basic cable is an essential service or a material term of the agreement, I find that the Landlord could not terminate this service.

Section 27(2) of the *Act* stipulates that a landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and the landlord 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.

On the basis of the undisputed evidence I find that cable was never provided with this tenancy. I therefore find that the Landlord was obligated to reduce the rent by an amount that is equivalent to the cost of obtaining basic cable, pursuant to section 27(2) of the *Act*.

The evidence shows that basic cable is available at a monthly cost of \$37.93. I therefore find that the Tenant is entitled to the full amount of her claim for being without cable for seven months, in the amount of \$265.51.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that items in the Tenant's refrigerator perished because contractors working in the rental unit unplugged the refrigerator. Although the Landlord and/or the Tenant may have the right to initiate a civil claim in which they seek compensation from the contractor for this loss, this is a matter that is beyond my jurisdiction.

I am only able to award compensation for a tenant if they suffer a loss as a result of the landlord breaching a section of the *Act*. I cannot conclude, however, that the loss of the perishable items was the result of the Landlord breaching any section of the *Act*. I am therefore unable to award compensation for the perishable items and I dismiss the Tenant's application for such compensation.

I hereby Order the female Landlord to comply with her agreement to meet the Tenant at a well-known coffee/donut shop on March 16, 2019 at 11:00, for the purposes of returning the Tenant's personal property.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$365.51, which includes \$265.51 in

compensation for being without basic cable and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlords do not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: March 15, 2019

Residential Tenancy Branch