



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RR, MNDCT

Introduction

On April 25, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to an Order for the Landlord to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “*Act*”), seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking monetary compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing with M.B. as her advocate. Both Landlords attended the hearing as well. All parties provided a solemn affirmation.

The Tenant advised that she served one Notice of Hearing package by registered mail to the Landlords on May 2, 2019 and the Landlords confirmed that they received this package. While the Tenant did not comply with Rule 3.1 of the Rules of Procedure and serve each Respondent with the Notice of Hearing package separately, as the Respondents have both received this package, I am satisfied that the Landlords were sufficiently served the Notice of Hearing package and that the hearing could proceed accordingly.

The Tenant advised that she served her evidence to the Landlords by registered mail on May 30, 2019. The Landlords confirmed that they received this evidence and that they are prepared to respond to it. Based on the undisputed testimony, while this evidence was late pursuant to Rule 3.14 of the Rules of Procedure, I am satisfied of service of the documents and that the hearing could proceed accordingly. I have accepted and considered the evidence when rendering this decision.

The Landlords advised that they served their evidence to the Tenant by hand on May 31, 2019 and the Tenant confirmed receipt of it. Based on the undisputed testimony, I

am satisfied of service of the evidence and that the hearing could proceed accordingly. I have accepted and considered the evidence when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an Order that the Landlord comply with the *Act*?
- Is the Tenant entitled to a rent reduction for an overpayment of rent due to an illegal rent increase?
- Is the Tenant entitled to compensation?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on May 1, 2016, and while there was some debate over the amount of rent due per month, rent was established at \$1,050.00 per month, due on the first of each month. A security deposit of \$525.00 and a pet damage deposit of \$525.00 were paid. A copy of the tenancy agreement was submitted as documentary evidence.

The Tenant submitted that the Landlords proposed an amendment to the tenancy agreement where the internet and cable provided will be terminated, however, in exchange for this, a rent increase will not be implemented. However, the Landlords then advised the Tenant that the internet and cable will be terminated as of April 1, 2019 but rent would not be decreased in the equivalent value. The Tenant did not agree to these changes in writing and she researched the cost of internet and cable, which exceeded the amount the Landlords reduced rent by. As well, the Landlords have not provided the proper Notice of Rent Increase form to increase rent in accordance with the *Act*.

She advised that she researched an equivalent service for internet and cable and that amounted to \$131.51 per month; however, the Landlords only reduced the rent by \$47.10 per month for these services. She submitted an invoice of a comparable internet and cable service from a different service provider to support her claim that the rent reduction from the Landlords is not sufficient. In addition, she stated that she requested an extra channel to be added to her services in May 2016, that she offered to pay for this channel, that the Landlords never responded to this request, and that the Landlords are now seeking compensation in the amount of \$401.00 for this, which she believes she should not be responsible for anymore.

The Landlords advised that they provided internet and cable for the entire property and this was under one account. They would then charge the upstairs tenants 2/3 of this bill and the Tenant 1/3 of the bill. Thus, it is the Landlords' belief that the reduction in the "value of the tenancy agreement resulting from the termination of these services" in accordance with Section 27 of the *Act* would amount to a reduction of \$47.10 per month in the Tenant's rent. The Landlords provided a Notice Terminating or Restricting a Service or Facility on March 1, 2019 to effect this change. It is also the Landlords' belief that the Tenant should coordinate with the other tenants on the property to share an account to lower the costs of these services. The Landlords also requested that the Tenant pay for an additional channel that the Tenant requested in May 2016, totalling \$401.00 up to the date of March 2019.

Finally, the Landlords submitted an email dated March 1, 2019 to support their belief that they complied with the *Act* by providing a notice of rent increase of 2.5%, effective for April 2019, to the Tenant by email in November 2018, and the Tenant accepted these terms and conditions.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 13 of the *Act* outlines the requirements of what must be included in a tenancy agreement. Furthermore, Section 14 of the *Act* states that a tenancy agreement may be amended with the agreement of both parties; however, this does not apply to rent increases.

Section 27 of the *Act* outlines the requirements for the Landlords to issue a proper rent increase to the Tenant as follows:

Terminating or restricting services or facilities

- 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.

Section 41 of the *Act* stipulates that the Landlord may only increase rent if they comply with the Sections pertaining to rent increases in the *Act*. Furthermore, Section 42 states that the Landlords must give the Tenant notice of a rent increase at least 3 months before the effective date of the increase, and this notice *must be* in the approved form. Finally, Section 43 indicates that the Landlord may impose a rent increase only up to the amount: calculated in accordance with the regulations, ordered by the Director of the Residential Tenancy Branch, or agreed to by the Tenants in writing.

In addition, I find it important to note that Policy Guideline # 37 outlines the following with respect to allowable rent increases:

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a copy of the

agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

When reviewing the evidence before me, I find it important to first review the tenancy agreement. In section three under the heading of "Rent", the Landlords indicated that rent was owed in the amount of \$1,050.00 per month and that amongst the other items included in the rent were: water, electricity, heat, cablevision, and internet. While the Landlords attempted to clarify how much was owed by noting "\$900.00 rent plus \$150.00 utilities", I find this notation in the tenancy agreement to be unclear and illogical as utilities are already included in the rent. Furthermore, the Landlords collected a security deposit and pet damage deposit in the amounts of \$525.00 each, and the Landlords own email confirms their attempts to increase rent based on the amount of \$1,050.00. As such, I am satisfied that rent is owed in the amount of **\$1,050.00** per month.

With respect to the Landlords' efforts to terminate the provision of the internet and cable, I am satisfied that they complied with the Section 27(2) of the *Act* by providing the Tenant with the proper written notice to terminate these services on March 1, 2019, effective for April 1, 2019. However, while the Landlords believe that they have reduced the rent in an amount equivalent to the value of the service, when I review the tenancy agreement, I find it important to reiterate that internet and cablevision are both services that are included in the rent. Furthermore, Section 27(2)(b) states that the Landlords must "reduce 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."

As the undisputed evidence is that the Tenant was provided with internet and cablevision, as per the tenancy agreement, and as that package cost the Landlord approximately \$161.77 per month, I am satisfied that this is the value of these services that were included in her rent. There is no evidence before me that the Tenant only received one third of these services provided. As such, I am not satisfied that the Landlord compensated the Tenant in the equivalent value of these services originally provided. As the Tenant has secured a cheaper provider for these services, I find that the Landlord must reduce the Tenant's rent in the amount of \$131.51 per month starting from April 1, 2019.

As a side note, I also find it unconscionable, unreasonable, and impractical that the Landlords expect that different tenants of the residential property, on different tenancy agreements, should work together to share one account for such services.

With respect to the Landlords' request of \$401.00 for the extra channel requested by the Tenant, having considered the evidence and the testimony of the parties, I find that the Landlords are prevented from receiving this compensation on the basis of estoppel.

Estoppel occurs when one party to a legal claim is stopped from taking legal action that is inconsistent with that party's previous words, claims, or conduct. Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party, if the first party has established a pattern of failing to enforce this right, and the second party has relied on this conduct and has acted accordingly. In order to return to a strict enforcement of their right, the first party must give the second party notice (in writing), that they are changing their conduct and are now going to strictly enforce the right previously waived or not enforced.

In this case, there is no evidence before me to indicate that the Landlords requested payment for this extra channel after it was first provided, and only asked for compensation almost three years later. The Landlords' failure to make any effort over a period of 3 years to seek reimbursement has, through their silence, provided implied consent to assume this cost. Furthermore, while the Tenant may have been originally responsible for paying this cost, the Landlords made no effort to communicate with the Tenant about how or when to pay it.

The Landlords' failure to do so over the 3 years is akin to silence and implied consent for the Tenant not to pay. The Landlords ought to have known that this cost still existed. That the Landlords requested compensation for three years of this debt strongly suggests that the Landlords were fully aware that this cost existed. I find that the Tenant has shown that, to allow the Landlords to now depart from this long-held implied consent would be detrimental to the Tenant. As such, I am satisfied that the Tenant is not responsible for this extra cost.

Regarding the Landlords' attempted rent increase, the *Act* requires that in order to do so, the Landlords must give the Tenant a notice of a rent increase at least 3 months before the effective date of the increase *and* use the approved form.

I find that the Landlords' attempts to increase the total rent owing by email, without using the approved form, is an attempt to contract outside of the *Act*. Consequently, I find that the correct amount of rent owing per month is established by the tenancy agreement that was signed on March 28, 2016 in the amount of **\$1,050.00**, and that this amount is how much the Tenant owes per month for the duration of their tenancy to date.

As an aside, to increase the rent at any point going forward, the Landlords must comply with the requirements of the applicable Sections of the *Act* by giving the Tenant a notice of a rent increase at least 3 months before the effective date of the increase *and* using the approved form.

To re-iterate my findings,

- The Landlords must compensate the Tenant in the amount of a **\$131.51** rent reduction per month as of April 1, 2019 for the termination of internet and cablevision.
- The Landlords are not entitled to seek compensation in the amount of \$401.00 for the extra channel that was requested by the Tenant.
- The Landlords' rent increase by email is not effective as it does not comply with the *Act*. Rent shall remain at **\$1,050.00** per month as of April 1, 2019 until raised in accordance with the *Act*.

Based on these findings, the parties are encouraged to recalculate the payments made as of April 1, 2019 to ensure that the correct amount of rent owing has been paid and will continue to be paid accurately going forward. Any overpayments in rent may be deducted from a future month's rent.

Conclusion

The Tenant's Application for a rent reduction is granted and the Tenant is permitted to withhold the appropriate amount of any rent overpayments from a future month's rent in accordance with my above findings, if applicable.

The Tenants' Application for an Order for the Landlord to comply with the *Act* is granted. The Landlord must comply with the terms of the original tenancy agreement signed on

March 28, 2016 and must comply with the applicable Sections of the *Act* and Regulations with respect to implementing future, legal rent increases.

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: June 25, 2019

Residential Tenancy Branch