



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and tenant R.J. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that he received the tenants' application for dispute resolution via registered mail but could not recall on what date. I find that the landlord was served with the tenants' application in accordance with section 89 of the *Act*.

Issues to be Decided

1. Are the tenants' entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Are the tenants' entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Are the tenants' entitled to a recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 15, 2017 and ended on March 31, 2019. Monthly rent in the amount of \$988.00 was payable on the first day of each month. A security deposit of \$475.00 was paid by the tenants to the landlord. A written tenancy agreement consisting of a hand-written paragraph was signed by the landlord but not the tenants and was submitted for this application.

Tenant R.V. testified that he sent the landlord his forwarding address in writing on April 24, 2019 via registered mail. Tenant R.V. entered into evidence a Canada Post Tracking Confirmation which states that the landlord received the package on April 26, 2019. The landlord testified that he received Tenant R.V.'s forwarding address in writing but could not recall on what date.

Both parties agree that the landlord did not return the tenants' security deposit or make an application to retain the tenants' security deposit within 15 days of receipt of the tenants' forwarding address in writing. The landlord testified that he retained the tenants' security deposit because there was damage to the subject rental property.

The tenancy agreement in its entirety states the following:

The 2 bedroom suite at [address of subject rental property] is to be rented to 3 people only on a month to month basis. The rent is to be \$950 per month. Rent is due on the first day of every month starting July 1, 2017, except the first is starting on June 15/17 and is only for half a month. The rent for the half month of June is \$475 which is due on the 15th of June 2017. There is also a security deposit of \$475 which is held by the landlord. No pets are allowed and no smoking is allowed inside.

Tenant R.V. testified that utilities and cable and internet were agreed to be included in the rent. Tenant R.V. testified that after one year the landlord asked the tenants to increase their rent over and above the legally allowable amount. Tenant R.V.s testified that when they refused, the landlord stopped providing cable and internet.

Both parties agreed that in a letter dated July 1, 2018 the landlord informed the tenant that internet and cable would be terminated effective July 15, 2017.

Tenant R.V. testified that on July 17, 2018 the landlord cut off cable and internet. In a letter dated July 17, 2018 addressed to the landlord, the tenants objected to the landlord disconnecting cable and internet because the landlord agreed at the time the tenancy agreement was entered into, to include these services in the rent. The landlord confirmed receipt of the July 17, 2018 letter.

Tenant R.V. is claiming \$438.84 for the cost of internet services from July 15, 2018 to March 31, 2019. Tenant R.V. entered into evidence internet receipts dated July 31, 2018 to March 11, 2019 totalling \$407.15.

Tenant R.V. is also seeking \$571.20 for loss of enjoyment of cable services from July 15, 2018 to March 31, 2019. Tenant R.V. testified that after the landlord disconnected the cable he did not have his own cable installed. Tenant R.V. testified that his claim is based on the monthly cost including taxes that he would have paid for cable services. Tenant R.V. entered into evidence an advertisement for basic cable at a rate of \$60.00 per month.

The landlord testified that he never agreed to include internet and cable in the rent, only utilities such as electricity. The landlord testified that the only reasons the tenants received free cable for the first year was because he forgot to disconnect them after the previous tenant moved out.

The landlord testified that the cancellation of cable and internet were not related to the rent increase he proposed.

The landlord testified that he responded to the tenants' July 17, 2018 letter in an undated letter, which was entered into evidence. The undated letter states that cable and internet were not included in the rent and the tenants were lucky to receive them for the first year.

Analysis

Security Deposit

I find that the landlord received the tenants' forwarding address in writing on April 26, 2019, as stated on the Canada Post delivery confirmation.

Section 38 of the Act requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

In this case the landlord did not file an application to retain the tenants' damage deposit or return the deposit within 15 days of receiving the tenants' forwarding address in writing. The tenants are therefore entitled to receive double their deposit from the landlord in the amount of \$950.00, pursuant to section 38 of the *Act*.

Tenancy Agreement Terms

All tenancy agreements between a landlord and a tenant with respect to a rental unit and residential property are subject to the *Act*, unless specifically exempted. The definition of "tenancy agreement" in section 1 of the *Act* includes tenancy agreements entered into orally, in writing, and by way of implied or express terms. Therefore, in this case, the parties are bound by the terms of their oral agreement and written agreement, including any implied or express terms.

I was provided opposing testimony that the parties had expressly discussed and agreed that cable and internet were included in the rent. However, it is undisputed that the landlord provided the tenant with cable and internet for approximately one year. Given the significant duration of the services being provided, I find that on a balance of probabilities, there was at least an implied term of tenancy that cable and internet were included in the rent. Therefore, I find that cable and internet were services included in the rent.

Section 27 of the *Act* states:

- (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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that cable and internet are not essential services. I find that the landlord breached section 27(2)(a) of the *Act* by not providing the tenant with 30 days' written notice, in the approved form, of the termination. I find that the landlord breached section 27(2)(b) of the *Act* by not reducing the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination. I find that the tenants suffered a loss in the value of the tenancy.

I find that the tenants have proved the loss suffered from the internet being disconnected, in the amount of \$407.15 as invoices for that amount were entered into evidence. I find that the tenants are entitled to recover \$407.15 for loss of internet services from the landlord.

I find that the tenants have proved the quantification of their loss for removal of cable services as evidence of the cost for basic cable services was entered into evidence at a monthly rate of \$60.00 per month. Both parties agree that cable was not provided for the last 8.5 months of the tenancy. PST and GST total 12%. I find that the tenant is entitled to recover \$571.12 from the landlord pursuant to the following calculation:

$$\text{\$60.00 (monthly cable cost) * 8.5 (months) = \$510.00 * 1.12 (GST and PST) =}$$

\\$571.12

As the tenants were successful in their application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
Doubled security deposit	\$950.00
Loss of value of tenancy- internet	\$407.15
Loss of value of tenancy- cable	\$571.12
Filing Fee	\$100.00
TOTAL	\$2,028.27

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: September 25, 2019

Residential Tenancy Branch