



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, MNDCT, LRE, LAT, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided; and a monetary order for damage or compensation under the Act; and to suspend or restrict the Landlord's right to enter; and for authorization for the Tenant to change the lock; and for an Order for the Landlord to Comply with the Act or tenancy agreement; and to recover the \$100.00 cost of her Application filing fee.

The Tenant and her advocate, D.O. ("Advocate"), and an agent for the Landlord, R.A. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties confirmed their email addresses at the outset of the hearing, and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or

documentary evidence to which they pointed or directed me in the hearing.

Early in the hearing, I advised the Parties that a one-hour hearing provides insufficient time to resolve the multiple issues for which the Tenant has applied regarding the five-year tenancy. Given the extensive evidence submitted on each point, and pursuant to Rule 2.3, I asked the Tenant to select the most important issue of the five claims in her Application, which would be addressed in this hearing. The Tenant said the most important issue for which she applied was for an order to reduce the rent for repairs, services or facilities agreed upon but not provided. Accordingly, I will consider the Parties' submissions on this point, as well as whether the Tenant is eligible for recovery of the Application filing fee. The Tenant's other claims are dismissed with leave to reapply, pursuant to Rule 2.3.

Issue(s) to be Decided

- Should the rent be reduced for repairs, services or facilities agreed upon but not provided, and if so, in what amount?
- Is the Tenant eligible for recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on May 1, 2015, and ran to April 30, 2016, and then operated on a month-to-month basis. The Parties agreed that the Tenant pays the Landlord a current monthly rent of \$652.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$300.00, and no pet damage deposit.

The Tenant said that the most important issue is the \$2,500.00 in rent reduction. She said:

I have no cable TV and not a working remote to change the channels. I've had 12 months without proper cable TV service. The laundry was included, but the Landlord blocked the laundry access for four months. I applied for a rent supplement, but Landlord did not cooperate for the application, so I lost the \$300.00 BC TRS. I also wanted repairs. It took them several months to respond, so I'm also claiming for a delay in repairs. The rent reduction is for the loss of cable TV and laundry facilities.

[my emphasis added]

I asked the Tenant how she arrived at the \$2,500.00 to compensate for the loss of these

services. She said:

It's for the loss of cable of \$800.00. That's for 12 months without proper service. It's a value \$37.45 a month [which comes to \$449.40 over 12 months (in Landlord's name)]. I included a Shaw cable invoice in the evidence on page 12 of Documents6.pdf. The extra is for not having TV during the pandemic. I rely on the TV news to hear the announcements. TV was my primary entertainment before it was terminated.

I had TV for the most part for 1½ years, but in November 2017 the cable signal dropped. I thought it was a technical problem with Shaw. I contacted the Landlord many times and he didn't do anything. He asked me to solve the problem myself. In January 2018, I called the Shaw technical support and the service was restored.

In October 2019, the remote stopped working, so I contacted Landlord ... On March 4, 2020, I got a working one. They had a big issue about that and terminated my service on March 4, 2019. Ever since then I don't have cable TV. In October 2019, my remote stopped working and I couldn't change the channel. It was not about a battery.

The Agent said:

Basically, it was the remote control issue, as she mentioned. The Landlord is in his late 80s. He is forgetful. Why was she given a receipt – the cable receipt? He wanted her to talk to [the cable company] to get the service, and also, if she could exchange her remote. I have done this for my Mom many, many times. You just have to go to [the cable company] and give them the remote. I have done this twice for my Mom. They keep on phoning the Landlord and he is forgetful.

Mr. [S.] is the real tenant, because he has been paying the rent and ordering the service, asking for repairs, and he has the phone number of the Landlord's son. The Landlord is very old and forgetful. Instead of contacting the Landlord, why can't they contact the son for repairs? There was one time the Landlord immediately called the grandson re the cable service. That is reflected on our evidence on page 11 of 38; so this is February 15 – there were three exchanges of phone calls between the tenant, Mr. [S.], and the grandson, and they had arranged an exchange of the remotes, so they could know if it's the remote not

working or the outlet signal not working. The arrangement is for the exchange of remote controls or lending the Landlord's remote to test out his device. The Tenant on March 4 went up to the Landlord to pay the rent and borrow the Landlord's remote. He returned the non-functional one. The Landlord was very unhappy. It is a betrayal of trust; you have arranged one thing and . . . they could go to [the cable company], even [the competitor] or whatever. It's their own remote control. I don't know what seems to be the issue. They betrayed the trust of the Landlord and they were very upset. They phoned the grandson, who phoned back the tenant and there was no response. With an exchange of text messages, finally the grandson said the cable remote has not been returned to you. The Tenant, Mr. [S.], said any time is fine. But he ignored the text message. We went to the unit, knocked on the door, and they didn't want to open up – see the police report. We were very much disturbed by their act of not returning the property.

It's a very small matter, but this was instigated by Mr. [S.], the Tenant. With the presence of the police, she refused to surrender the remote to us. We decided that we should suspend the cable service. . . . It's a betrayal of trust. They did not follow the arrangement. You have to ask for permission to do that. It is our property. You can't say 'it is your job'. You have to ask permission.

The Tenant said:

The tenancy agreement includes television and cable. The cable is the responsibility of the Landlord. I was going to the Landlord to have this problem resolved. They claim that they consider one of the occupants as the tenants, which were decided in previous arbitration. If you look at the evidence on page 14 it is re a rent increase from the Landlord to [me].

Whether it is essential or non-essential, if non-essential it can be terminated, but it has to be done properly. In this case there were a lot of communication problems and they decided they are going to retaliate. The cable TV remote seems like an easy thing to solve, but on March 4, the police were actually called by the Tenant, not the Landlord.

The Agent said:

This has already been addressed in the last hearing We have admitted wrongdoing re access to property without 24 hours' notice, because the property

was taken by the Tenant without returning it. The [other Arbitrator] has already lectured us on the necessity of the 24 hours' notice; we paid a heavy price. . . . This is a dispute going on to be addressed later in court. We don't understand why we have to raise this March 4 incident again.

They tested out that it was not working. This could have been easily resolved ... a case of misunderstanding and asking the Landlord to swap the remote at [the cable company].

Instead of just ignoring our messages and phone calls and finally the police had to be called, and we made a bad mistake to enter the unit. Can you please just exchange the faulty one that we handed over to your grandfather. It would have been easily resolved there and then. But it is the ignored message and phone calls. We thought about it, we asked for just a simple apology. There was a mistake. A miscommunication. With that little minor apology; we hinted to them. We only need one apology to restore the cable service. The cable service for the entire household is \$37.45. It hasn't been changed for a couple years. I don't know how she came up with \$800.00.

The Parties both submitted a copy of the tenancy agreement; however, only the Tenant provided a translation of the tenancy agreement. Her translation states that the rent includes Cable TV; however, the original tenancy agreement has English portions, which state that the rent includes: "Refrigerator & Stove, Water, Electricity & heat." There is no reference to cable television being included in the rent in the tenancy agreement, other than in the Tenant's translation of this document.

The Landlord submitted a note written by the Tenant, S.Q.S., that accompanied the security deposit, with a translation, which included: "For rental of a 1-bedroom basement suite at [rental unit address] for a total of \$600/month including cable TV, hydro and electricity."

The Landlord also submitted a letter dated May 10, 2020, in which it states:

As indicated to the Police on April 15, I have already spoken to you many times since October 2019 to contact my son [O.] for all of my rental affairs because of my heart condition and worsening mental capacity.

Please accept this letter as my authorization to appoint my son [O] and my son-in-law [R.] to fully represent myself in all rental affairs of [rental unit address]. You

are now requested in writing to contact them for all of your rental needs including payment of rent which has now been outstanding since April 2020.

[O.S. telephone number]

[R.A. telephone number]

Kindly avoid calling my home number or contacting me personally unless during the presence of my son or daughter. Thank you for your understanding.

[photocopy of the Landlord's Canadian identity card, including his birth date of Sep 14, 1938]

[emphasis in original]

In terms of access to laundry facilities, I note that this service is not set out in the tenancy agreement as being included in the rent. In the hearing, the Agent said that it was not included, although the Landlord is aware that the Tenant has used the washer and dryer on a few occasions. The Tenant claims that she is entitled to access to the laundry facilities and that the Landlord blocked her access by putting a ladder in front of the laundry room door.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 1 of the Act includes a definition of "service or facility", which "includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit." "Cablevision facilities" are included within this definition.

Section 27 of the Act sets out a landlord's obligations regarding the termination and restriction of services or facilities. It requires that a landlord must not terminate or restrict a service or facility, if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

Policy Guideline #22, states:

An 'essential' service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the

tenant's use of the rental unit as living accommodation . . ., the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

Based on the evidence before me from the Parties, I find that while the Tenant may have felt that access to television programs was essential to the rental unit, I find that it is not comparable to an elevator in a multi-story residential property. Then again, as the time period in which the cable television was not available included the pandemic, I find that access to television *became* essential to the tenancy.

The essence of this dispute is determining who is responsible for returning the cable remote to the cable company for replacement. Although the Tenant was the only Party to offer a translation of the tenancy agreement, the Agent did not dispute the accuracy of this translation or of the Tenant's note that accompanied the security deposit, and said the rent included cable television. As a result of the information before me overall, I find that the Landlord was responsible for providing cable television to the Tenant as part of this tenancy. The Agent said: "You can't say 'it is your job'. You have to ask permission." Actually, I find that according to the tenancy agreement, it is the Landlord's job, or that of his agents, to ensure the Tenant has access to cable television services, regardless of how politely the Tenant asks for the service to be provided.

I find that the Tenant did not provide sufficient evidence to prove the amount of time with which she was without cable service in order to receive her requested rent reduction. Rather, the Tenant referred to a month or two here and there, after which she contacted the cable company, and the service was resumed.

I also find that the Landlord and his agents could have solved the issue with the television remote control by simply returning it to the cable company for one that worked. I infer from their testimony that they were waiting for an apology from the Tenant for not returning the Landlord's remote control after determining that the remote was the problem.

Based on the evidence before me overall, I find that there is some fault on both sides, and therefore, I grant the Tenant a nominal rent reduction from the Landlord in the amount of ten percent of the Tenant's claim or \$250.00. This award is made pursuant to Policy Guideline #16 and sections 65 and 67 of the Act. I understand that the

tenancy has ended; therefore, the Tenant is awarded a monetary order from the Landlord for **\$250.00**. Given the limited success of the Tenant in this Application, I decline to award her with recovery of the \$100.00 Application filing fee.

The Tenant's claim for a rent reduction because she was denied access to the laundry facilities is dismissed without leave to reapply. I find there is nothing in the tenancy agreement, which states that laundry services are included in the rent; therefore, I find I prefer the Landlord's evidence that the Tenant is not entitled to access this facility.

The Tenant's other claims are dismissed with leave to reapply, pursuant to Rule 2.3, as noted above.

Conclusion

The Tenant is awarded a nominal monetary order of **\$250.00** from the Landlord to represent a rent reduction for the Tenant's limited access to cable television service, including access to a working remote control. Otherwise, the Tenant did not provide sufficient evidence to fulfill her burden of proof on the bulk of her rent reduction claim considered in this hearing.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$250.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) 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, 2020

Residential Tenancy Branch