



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 8860 MONTCALM ST. HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 13, 2020 (the “Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated November 10, 2020 (the “Notice”);
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement; and
- To recover the filing fee.

The Tenant appeared at the hearing. I explained the hearing process to the Tenant who did not have questions when asked. The Agent for the Landlord appeared at the hearing 21 minutes late. The parties provided affirmed testimony.

The Agent confirmed the correct name of the Landlord which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession based on the Notice?
3. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?
4. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant sought an order that rent be reduced by \$86.73 for the cost of cable which was previously provided by the Landlord but is no longer provided by the Landlord.

A written tenancy agreement was submitted as evidence. The tenancy started October 01, 1998.

The parties agreed rent is \$896.00 per month due on the first day of each month.

The Notice states that the Tenant failed to pay \$71.30 in rent that was due November 01, 2020.

There was no issue that the Tenant received the Notice November 13, 2020.

The Tenant acknowledged deducting \$71.30 from November rent due to the Landlord no longer providing cable.

The Tenant acknowledged that the \$71.30 noted on the Notice had not been paid to the Landlord at the time of the hearing.

The Tenant testified as follows in relation to the cable issue. At the start of the tenancy, the agent for the landlord named on the written tenancy agreement did not complete a form about cable. The Tenant had free cable since moving into the rental unit in 1998. It was the Tenant's understanding that cable was included in the tenancy agreement based on a verbal discussion or agreement with the agent for the landlord named on the written tenancy agreement. There was also a notation on the glass of the building when

the Tenant moved in which said “cable included” or something to this effect. Further, the landlord noted an increase in cable costs as a basis for a previous rent increase.

The Tenant further testified as follows. The Tenant received a letter from the cable provider about the Landlord cancelling their bulk agreement with the provider and about the Tenant setting up an account. The Landlord did not provide notice that they were cancelling their agreement with the cable provider. The Tenant now must pay for cable. The Tenant paid \$71.30 for the first month of cable and has paid \$86.73 per month since. The Tenant deducted the cost of cable from rent. The Landlord did not agree to cover the cable costs or reduce rent although the Landlord is covering cable costs for other tenants.

The Agent testified as follows. The Landlord purchased the rental unit building in 2018 and became the landlord. The Landlord’s contract with the cable provider was cancelled September 30, 2020. The Landlord reviewed all tenancy agreements, only eight of which included cable. The Landlord agreed to cover the cost of cable for these eight tenants; however, the Tenant was not one of these tenants. There is no indication in the Tenant’s tenancy agreement that cable is included in the rent. The whole building including the rental unit had cable through the bulk agreement with the cable provider up until September of 2020.

The Agent did not know how long the Tenant had had cable for through the bulk agreement and did not know if it started in 1998. The Agent was not aware of discussions between the agent for the landlord named on the written tenancy agreement and the Tenant at the start of the tenancy. The Agent was not aware of a notation on the glass of the building stating “cable included” or something to this effect. The Agent advised that they had been working with the Landlord or building for four years. The Agent acknowledged that the cost of cable for the tenants who have had it covered by the Landlord is around \$90.00.

Analysis

Order that Landlord Comply

Section 1 of the *Residential Tenancy Act* (the “Act”) includes the definition of a tenancy agreement and states:

"tenancy agreement" means an agreement, whether written or **oral**, express or **implied**, between a landlord and a tenant respecting possession of a rental unit, use

of common areas and services and facilities, and includes a licence to occupy a rental unit (emphasis added)

A “service or facility” is also defined in section 1 of the *Act* and includes cable.

Section 27 of the *Act* states:

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 62(3) of the *Act* states:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Policy Guideline 22 deals with termination or restriction of a service or facility and states:

C. RENT REDUCTION

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant....

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 six issues which must be addressed by the landlord and tenant.

- 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 service or facility is essential to the use of the rental unit as living accommodation or the use of the manufactured home site as a site for a manufactured home;
- whether the landlord gave notice in the approved form; and
- whether the rent reduction reflects the reduction in the value of the tenancy.

I am satisfied the provision of cable was an implied term of the tenancy agreement for the following reasons.

I accept that the Tenant and the agent for the landlord named on the written tenancy agreement had a discussion or agreement about this at the start of the tenancy. I did not have any reliability or credibility concerns about the Tenant's testimony in this regard. The Agent did not know what discussions were had between the Tenant and the agent for the landlord named on the written tenancy agreement at the start of the tenancy and therefore I consider the Tenant's testimony on this point to be somewhat undisputed.

I also accept that the Tenant has had cable provided by the landlord since 1998, for more than 22 years. Again, I did not have reliability or credibility concerns about the Tenant's testimony in this regard. Again, the Agent did not know when the provision of free cable started for the Tenant and therefore I consider the Tenant's testimony on this point to be undisputed.

I also accept that there was a notation on the building glass stating "cable included" or something to this effect. Again, I did not have reliability or credibility concerns about the Tenant's testimony in this regard. I acknowledge that the Agent was not aware of this; however, the Agent has only been involved with the Landlord or building for four years and therefore I am not satisfied the Agent would be aware of what was noted on the building glass for the first 18 years of this tenancy.

I acknowledge that the tenancy agreement does not state that rent includes cable. However, I note that term 3 does not show that any services or facilities are provided by the Landlord despite the list of possible services and facilities including such basics as window coverings, fridge, stove, sewage disposal, carpet and garbage collection.

In these particular circumstances, I am satisfied the provision of cable was an implied term of the tenancy agreement.

There is no issue that the Landlord stopped providing cable in September of 2020 as the parties agreed on this. I am satisfied that the cost of cable claimed by the Tenant, being \$86.73, is the cost for a comparable service given the Agent acknowledged the Landlord is covering approximately \$90.00 for cable for other tenants.

I am satisfied section 27(2) of the *Act* applied and that the Landlord was required to reduce the Tenant's rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination of the cable. I am satisfied that the equivalent amount is \$86.73.

Pursuant to section 62(3) of the *Act*, I order that the Landlord comply with the tenancy agreement and *Act* and reduce the Tenant's rent by \$86.73. The Landlord was required to do so as of October 01, 2020 given the bulk agreement for cable ended in September of 2020.

10 Day Notice

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution...

There is no issue that the Tenant received the Notice November 13, 2020. The Tenant filed the Application the same day and therefore disputed the Notice within time.

There is no issue that the Tenant withheld \$71.30 from November rent as the parties agreed on this. I have found that the Landlord was required to reduce the Tenant's rent by the cost of cable starting October 01, 2020. Therefore, the Tenant's rent for November 01, 2020 should have been reduced. Given this, the Tenant paid the required rent for November despite withholding \$71.30. Therefore, the Landlord was not entitled to issue the Notice pursuant to section 46(1) of the *Act*. The Notice is therefore cancelled.

Filing Fee

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

Conclusion

Pursuant to section 62(3) of the *Act*, I order that the Landlord comply with the tenancy agreement and *Act* and reduce the Tenant's rent by \$86.73.

The Notice is cancelled.

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee. The Tenant can deduct \$100.00 from one future rent payment as reimbursement for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 28, 2021

Residential Tenancy Branch