



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, DRI, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement;
- to dispute a rent increase that is above the amount allowed by law; and
- recovery of the filing fee.

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties confirmed receiving the other's evidence.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments

are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

At the beginning of the hearing, the matter of a settlement was raised. After a brief discussion, the parties agreed to a partial settlement of the tenant's application.

The parties were informed that I would record their settlement, as noted below, and that the settlement was a voluntary, mutual decision.

The parties understood that I would decide the remaining issues in the tenant's application, as no settlement could be reached on those issues.

Partial Settlement – monetary compensation

The terms of the settlement are as follows.

1. The landlord agrees to the tenant's monetary claim of \$1,496, and the additional claim of \$126 for the months of March and April 2021, for a total amount of **\$1,622**, as reimbursement for overpayment of rent.
2. The parties agree that the tenant will satisfy this monetary award by withholding this amount from future monthly rent payments.
3. The parties agreed that the monthly rent prior to the notices of a rent increase in letter form issued to the tenant was \$1,270.
4. The parties understood and agreed that the tenant's monthly rent, beginning on May 1, 2021, is \$1,270, and will remain at that amount until it is increased in a manner complying with section 42 of the Act.

Remaining Issue(s) to be Decided

Is the tenant entitled to reimbursement for an internet expense?

Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties submitted a written tenancy agreement showing a tenancy start date of November 1, 2015, beginning monthly rent of \$1,225, due on the 1st day of the month, and a security deposit of \$550 being paid by the tenant to the landlord.

The tenant submitted that he is entitled to the cost of internet service for 30 days between September 18 and October 18, 2020. The tenant submitted the landlord terminated his internet access, which he had been paying for since May 1, 2017.

The tenant confirmed that he initially had a verbal agreement with the landlord for WIFI, as he was given the landlord's password. The amount was \$20, which he included in the monthly rent.

The tenant submitted he is entitled to the cost of a 30-day commercial plan, charged by the provider, \$106.40, plus \$10 for half of the \$20 payment made on the monthly rent.

As to the tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, the tenant submitted that he was requesting the landlord comply with the requirements of the Act for increasing the monthly rent and that the landlord issue a proper notice of termination of a service or facility.

Also included in this part of the tenant's application was a request to pre-emptively dismiss the landlord's stated intent of making deductions from his security deposit and to annul the terms of the addendum to the written tenancy agreement.

Landlord's response –

The landlord submitted that he was not required to provide the internet to the tenant under the written tenancy agreement and that he only did so as a gift for the tenant's daughter. The landlord said he charged the tenant a small amount of an additional \$20 per month, which was separate and apart from the monthly rent.

The landlord submitted that he was self-employed, and that due to Covid, he required full broadband for work-from-home purposes. The landlord said he never raised the price of the internet provided to the tenant and gave the tenant 18 days' notice of termination.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

The claiming party, the tenant in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

As to the loss of the internet, section 27(2) of the Act states that a landlord may terminate or restrict a non-essential service if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and 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.

In this case, based on the undisputed evidence, I find that the landlord was not obligated to provide internet service to the tenant under the written tenancy agreement. The addendum to the tenancy agreement specifically provided that internet or cable was not included in the monthly rent.

I accept that the landlord provided his password to the tenant as a gift, as he claimed, for the tenant's daughter, as he only charged \$20 per month, several years after the tenancy started.

As I find the landlord was not obligated to provide the internet to the tenant by the Act or the tenancy agreement, I dismiss the tenant's claim for \$116.40 for reimbursement along with his request that the landlord comply with this section of the Act.

As to the tenant's request for an order requiring the landlord to comply with the Act as to rent increases, the requirements were discussed at the hearing and the landlord

expressed that he understood this was the only way to increase the monthly rent, under the Act. I therefore did not find it appropriate to issue an order for such compliance.

The landlord was informed at the hearing that he must deal with the tenant's security deposit in a manner complying with section 38 of the Act.

The tenant was informed that I did not have authority under the Act to annul a signed document, which formed part of the written tenancy agreement.

I also have no authority under the Act to cancel or annul a landlord's caution notice.

As the tenant's application was partially settled and I as I have dismissed the remaining claims of the tenant, I award the tenant recovery of a partial filing fee, in the amount of \$50.

Conclusion

The tenant and the landlord have reached a partial settled agreement on the tenant's application.

Based upon the settled agreement as outlined above and based upon my finding that the tenant is entitled to recovery of \$50 for the filing fee, I find the tenant is entitled to a total monetary award of **\$1,672**.

I direct the tenant to withhold his monetary award of \$1,672 from future monthly rent payments. I direct the tenant to withhold the full amount of \$1,270 from the May 2021, monthly rent and deduct the remaining balance of \$402 from the monthly rent of \$1,270 for June 2021.

This settlement agreement was reached in accordance with section 63 of the *Residential Tenancy Act*. The parties are bound by the terms of this agreement, as well as by the terms of their tenancy agreement and the Act. Should either party violate the terms of this settled agreement, the tenancy agreement or the Act, it is open to the other party to take steps under the Act to seek remedy.

The tenant's request for compensation for the cost of a 30-days internet package and re-payment of a partial payment of \$10 is dismissed, without leave to reapply.

The tenant's request for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement is dismissed.

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: April 9, 2021

Residential Tenancy Branch