



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

On January 8, 2023, the Tenant applied for a Dispute Resolution proceeding seeking an Order to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

On April 17, 2023, the Tenant amended her Application seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with W.W. attending as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package, with some evidence, was served to the Landlord by registered mail on January 13, 2023. W.W. confirmed that the Landlord received this package. Based on this undisputed testimony, I am satisfied that the Landlord has been duly served the Tenant’s Notice of Hearing package and some evidence.

She then advised that she served her amendment, with additional evidence, to the Landlord by email on April 17, 2023, prior to receiving permission to do so via a Substituted Service Decision dated April 20, 2023. The Landlord confirmed that she received this amendment and additional evidence, and she did not have any position with respect to how and when it was served. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that she served her evidence to the Tenant by email on April 19, 2023, and the Tenant confirmed that she received this. As such, I have accepted this evidence and will consider it 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 a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

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.

All parties agreed that the tenancy started on April 14, 2022, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on April 13, 2023. Rent was established at an amount of \$2,150.00 per month and was due on the 13th day of each month. A security deposit of \$1,110.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenant advised that she was seeking compensation in the amount of **\$403.20** because internet was included in the tenancy agreement, but she did not realize this at the start of the tenancy. She testified that she asked about the internet and the Landlord told her to sign up for her own account. She stated that she was not aware of her rights, so she created her own account on April 14, 2022. This account bundled internet with cable TV as a two-year promotion, where the first year was free. She acknowledged that TV was not included as part of the tenancy agreement.

She testified that when she brought this to the Landlord's attention in an email dated November 15, 2022, the Landlord would not take over her existing account. However, the Landlord agreed to reimburse the activation fee of \$56.00 eventually. As this tenancy ended after one year, the amount of compensation that the Tenant is requesting is for the cancellation fee of her internet and cable TV account. She referenced documentary evidence to support her position.

W.W. referenced documentary evidence submitted where the Tenant had the option of choosing between a one or two-year plan for internet. He confirmed that the internet was included as part of the tenancy agreement, but TV was not. He acknowledged that the Landlord compensated the Tenant in the amount of the activation fee. However, it is the Landlord's position that she should not be responsible for paying the cancellation fee as there was no reason for the Tenant to cancel, and she could take this account with her to her new residence.

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.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

Regarding the Tenant's claim for compensation, the consistent and undisputed evidence is that internet was included as part of the rent in the tenancy agreement, so I am satisfied that the Landlord was required to provide this. However, it was not included, and the Tenant was required to set this up herself. Given that the internet was required to be provided by the Landlord, the Tenant could have simply chosen any plan, and then sought reimbursement for this from the Landlord. Despite this, the Tenant elected to sign up for a two-year promotional plan where the first year was free.

Based on the terms of this plan, there is no dispute that the Tenant did not pay any fees for this first year, with the exception of the activation fee, which was later reimbursed by

the Landlord. As such, the Tenant had suffered no loss during this first year of the plan. However, there is also no dispute that the tenancy ended after one year. While the Tenant is attempting to suggest that the Landlord should be responsible for the subsequent cancellation fee for this account, I do not find it reasonable to accept this position.

As noted above, the Tenant could have registered for any internet plan, and sought reimbursement of this from the Landlord as it was required to be provided in accordance with the tenancy agreement. While the Tenant claimed she did not know that this was included as part of the tenancy agreement, this was clearly indicated in that agreement. Secondly, she elected to sign up for a promotional agreement where the terms of the contract were free for the first year; however, she chose of her own volition to cancel this contract for the second year, which invoked a cancellation fee. Given that the Tenant knowingly signed up for this specific plan, I do not accept that the Tenant can now expect that the Landlord be responsible for the entire burden of this cancellation fee due to the Tenant's choices.

Based on my assessment of this situation, the Landlord was clearly responsible for providing internet to the Tenant as a term of the tenancy agreement. However, as the Tenant willingly signed up for a promotional plan which provided some benefits for the first year, but then chose to breach that contract, I am satisfied that the Tenant is also culpable here as well. In addition, as the Tenant also chose to sign a promotional contract which bundled internet with TV, given that the Landlord was not required to provide TV as part of the tenancy agreement, I find that the Tenant received additional benefit from this promotional agreement.

As the cancellation fee was \$403.20, but this included cable TV, I find it appropriate to reduce this cancellation fee to \$201.60. Given that the Landlord was responsible for providing internet for the length of the tenancy, and given that the Landlord did not pay anything for internet, except for the activation fee, I find it reasonable to grant the Tenant a monetary award in the amount of **\$201.60** to remedy this matter.

As the Tenant was partially responsible for this matter by attempting to benefit from a promotional plan, but then cancelling it prematurely, I find that the Tenant is only entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Internet	\$201.60
Recovery of filing fee	\$50.00
TOTAL MONETARY AWARD	\$251.60

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$251.60** 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: May 18, 2023

Residential Tenancy Branch