



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL; MNDC; RR; FF

Introduction

This is the Tenant's application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Rental Property* issued August 3, 2012 (the "Notice"); for compensation for damage or loss under the tenancy agreement; for a reduction in rent for services agreed upon but not provided; and to recover the filing fee from the Landlord.

The parties and the Landlords' witness gave affirmed testimony at the Hearing.

It was established that the Tenant served the Landlords with the Notice of Hearing documents by registered mail sent August 23, 2012.

Each parties confirmed receipt of the other's documentary evidence. The Landlord provided late evidence to the Tenant and the Residential Tenancy branch, which was not considered in this Decision. The Landlords were provided the opportunity to provide

Issue(s) to be Decided

- (1) Should the Notice be cancelled?
- (2) Is the Tenant entitled to compensation for loss of cablevision at the rental unit?
- (3) Is the Tenant entitled to a rent reduction equivalent to the cost of cablevision?

Background and Evidence

The rental unit is one of 17 apartments in a three storey building. The Landlords purchased the rental property, thereby inheriting the tenancies within the rental property on December 28, 2011.

The Tenant lives on the second floor of the rental property. Her tenancy began on September 1, 1989. Rent at the beginning of the tenancy was \$385.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$192.50 at the beginning of the tenancy. Current monthly rent is \$532.00. A copy of the tenancy agreement was provided in evidence, which indicates that cable is included in the rent.

The Landlords issued the Notice on August 3, 2012, and on the same day placed a copy in the Tenant's mailbox and slipped another one under her door. A copy of the Notice was provided in evidence.

The Landlords testified that their son ("RS") is going to move into the rental unit. Their witness, who is RS's current landlord, testified that RS gave her written notification on August 1, 2012, that he would be ending his tenancy effective November 1, 2012. She stated that RS told her that his work hours had been diminished and that he could no longer afford to pay \$800.00 rent.

The Tenant testified that she found on-line ads for other units in the building that were available for rent and therefore the Landlords did not require her to move out. The Tenant provided copies of the on-line ads in evidence.

The Landlords testified that there had been two rental units available, but that one was re-rented effective mid-June, 2012 and the other was re-rented for July 1, 2012. Both of these dates were before their son's employment hours diminished.

The Landlords testified that they had much better success using two other on-line sites, but they kept a generic ad open on a third on-line site because they had paid for a year's advertising on that site. They testified that this third site was the site where the Tenant saw the ads. The Landlords stated that they had very few people call as a result of this ad, but that they would tell potential renters that they could go on a waiting list.

The Landlords testified that they had no trouble re-renting suites in the rental property because the suites were well maintained and updated at the end of each tenancy. The male Landlord stated that he could not be more specific about the yearly contract he had with the on-line site (for example, he did not know if the site automatically updated the "available date" for the generic ad, or if it was intended to be for an advertisement for one specific suite or multiple suites as they became available).

The Tenant testified that in February, 2012, her cable provider called her and stated that the Landlords would no longer be paying for cable service at the rental property. The cable provider asked her if she wanted to continue to receive cablevision. The Tenant stated that she took advantage of a limited introductory promotion and signed up with the cable company. She testified that she signed up for "3 tier" service, which was what she had been getting under the tenancy agreement. The Tenant provided copies of the cable bills in evidence. The Tenant seeks reimbursement in the amount of \$281.67 for the cost of cable to and including August 20, 2012, and a rent reduction in the amount of \$74.98 per month to compensate her for loss of this service.

The Landlords stated that they did not have a copy of the tenancy agreement until the Tenant provided it in her evidence package.

Analysis

In an application such as this, where a Tenant seeks to cancel a Notice to End Tenancy, the burden is on the Landlords to provide sufficient evidence to support the Notice.

I find that the Landlords did not provide sufficient evidence to support the Notice, for the following reasons:

1. The Landlords did not provide copies of the tenancy agreements which they stated were entered into prior to July 1, 2012. These documents were readily available to the Landlords.
2. The on-site ads that the Tenant provided are for rental units available September 15, 2012 and November 1, 2012. The Landlords were vague with respect to specifics about these ads and could not provide details with respect to how the ads were posted. The document that the Landlord provided to support their claim that they had pre-paid for one year's service is dated July 6, 2012, which is 6 days after the date that they testified the last vacancy was filled.

For the reasons noted above, I hereby cancel the Notice and the tenancy will continue.

With respect to the Tenant's application for compensation and a rent reduction for loss of cable service, I find that cable service is included in rent. Section 27 of the Act provides that Landlords may terminate or restrict a non-essential service such as cable, but not without providing 30 days' written notice to the Tenant, and reducing the rent in an amount equal to the reduction in the value of the tenancy agreement resulting from that termination or restriction.

Based on the documentary evidence and oral testimony provided, I find that the Landlords did not comply with Section 27 of the Act and that the Tenant has suffered a loss as a result. However, the Tenant did not provide sufficient evidence that the cable service she was receiving under the tenancy agreement was more than "basic" service, which is generally \$35.00 per month. The Tenant provided invoices and a breakdown of the amounts she has paid for "3 tier" service, including a limited introductory promotion. I allow this portion of the Tenants claim, calculated as follows:

Billing period	Amount paid
March 1 – 20, 2012 (promotion)	\$14.69

March 21 – April 20, 2012 (promotion)	\$22.34
April 21 - May 20, 2012 (promotion)	\$22.34
May 21 to June 20, 2012 (promotion)	\$22.34
June 21 to July 20, 2012	\$35.00
July 21 to August 20, 2012	\$35.00
Total compensation	\$151.71

In addition to the monetary compensation set out above, I order that rent be reduced by **\$35.00** a month effective October 1, 2012.

The Tenant has been successful in her Application and I find that she is entitled to recover the cost of the filing fee from the Landlords.

Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct her monetary award from future rent due to the Landlords. For clarity, rent for the month of October will be **\$295.29** (\$532.00 - \$151.71 - \$35.00 - \$50.00). Rent for subsequent months will be **\$497.00** (\$532.00 - \$35.00).

Conclusion

The Tenant's application to cancel the *2 Month Notice to End Tenancy for Landlord's Use of Property*, issued August 3, 2012, is granted.

The Tenant has established a monetary award in the amount of \$236.71 and a rent reduction effective October 1, 2012, in the amount of \$35.00 for loss of cable facilities. The Tenant may deduct her monetary award from future rent due to the Landlord. For clarity, **rent for the month of October will be \$295.29, and for subsequent months will be \$497.00.**

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 21, 2012.

Residential Tenancy Branch