



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Heights Restaurant
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RR

Introduction

This was a hearing with respect to an application by the tenant for a monetary award, for an order that the landlord comply with the *Residential Tenancy Act* or tenancy agreement and for a rent reduction. The hearing was conducted by conference call. The tenant attended with her advocate and the landlord's representative called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation and a rent reduction for the termination or restriction of a service or facility.?

Background and Evidence

The rental unit is an apartment in North Vancouver. The tenancy began in 2002. At the beginning of the tenancy the monthly rent was \$625.00. The current monthly rent is \$805.00.

When the tenancy started basic cable television was included in the rent. On September 30, 2010 the landlord sent a letter to all tenants, including the applicant. The letter said in part that:

In addition, please be advised that starting November, 2010, Shaw Cable will no longer deliver basic cable service in bulk, to (name of apartment).

Therefore, you will need to contact Shaw Cable before this time to arrange for cable services you wish to receive in your own apartments. You will also need to arrange for your payment of your own cable bills. Individual suites will have the choice of different services they wish, so amounts will differ for each suite.

The last month that (name of landlord) pays for the cable service will be October, 2010, so please make your arrangements **before** November 1, 2010 in order to avoid any interruption to your cable services. (reproduced as written)

The tenant obtained the assistance of a legal advocate who sent an e-mail to the landlord on her behalf on October 20, 2010. The e-mail message said that cable services were included in the tenant's rent and since this was a service or facility that was now restricted by the landlord, the tenant requested that her rent be reduced by an amount that was equivalent to the reduction in value of her tenancy agreement that resulted from the termination of the cable services. The advocate said that the amount should be equivalent to the value of her monthly cable package. The tenant's advocate was replaced by a new advocate and on November 2, 2010 the advocate reiterated the message.

On November 5, 2010 the landlord's representative responded. She said that she did not receive the original message. She responded to the message and said that the tenancy agreement provided that upon 30 days written notice the landlord may change or remove services, if the method by which they are supplied to the landlord changes. The landlord said that:

Being as the method of delivery is changed to me (the bulk agreement contract is over and not renewed) then I may discontinue the cable service.

2. In addition, I have not raised (name of tenant)'s rent for many years, so if you like, we can reduce her rent by \$22 (the amount I paid per suite for cable) and then raise her rent by \$25 – which would mean she would be paying \$3 more per month than if we leave things as they are.

3. Or, I could raise her rent anyways – which I have forborn to do because I feel the loss of cable service is enough for my tenants to suffer.

Therefore, I hope you see that I have chosen the option that results in the least amount of rent paid by the tenant.

On January 27, 2011 the tenant's advocate responded. She noted that although the tenant was given 30 days written notice, it was not in the approved form. She said that:

We have contacted Shaw Cable to enquire about the value of the basic cable services that (name of tenant) was receiving as part of her tenancy agreement prior to November 1, 2010. We were informed that basis cable services cost \$41.38 a month with taxes included.

Accordingly, we are of the view that as per section 27 (b) of the Act, (name of tenant)'s monthly rent should be reduced from \$755.00 to \$713.62 as of November 1, 2010.

The advocate requested that the tenant's March rent: "be reduced by an additional \$165.52: to reflect the overpayment from November 2010 to February 2011."

The landlord's representative responded on January 28, 2011. She said that she had already responded to the issue and repeated that she paid only \$22 per month for her cable services and said that: "I don't feel it is reasonable to provide (name of tenant) with a reduction of what it would have cost her had she been paying the service herself. This is a specious claim as to what a service cost is comprised of." The landlord's representative again said she could raise the rent by an amount equal to the cable charge and went on to comment that she had not raised the rent for recent years. And if the tenant intended to pursue the matter the landlord would raise the rent every year: "and matters will be far worse in a couple of years than if I refrain."

On July 26, 2011 a new advocate again wrote to the landlord on behalf of the tenant. The advocate stated the tenant's position, which was that:

Residential Tenancy Policy Guideline #22 "Termination or Restriction of a Service or Facility" states the landlord must reduce the rent to compensate the tenant for loss of service. Compensation amounts to \$41.38 a month as this is the cost to the tenant.

The advocate said that the tenant was asking for \$369 compensation for the months November 2010 to July 2011, calculated at \$41 for nine months, and for her rent to be reduced by \$41 a month as of August 1, 2011.

The landlord's representative responded on July 29, 2011. She asserted (incorrectly as it turns out) that the tenant did not have a written tenancy agreement and went on to say that:

Given that we have not raised the rent very often (not annually as we are allowed) out of deference to her financial situation (her current rent is only \$755.00, a modest increase of \$105 from 2002 to the present) I would have thought that she was rather fortunate in the circumstances.

The tenant's advocate replied to the message on August 2, 2011. She disagreed with the landlord's remarks about the consequence of the absence of a written tenancy agreement and then said that she would speak to the tenant to find out what she wants to do and concluded by saying: "I will get back to you soon."

There were no further communications about the matter until the tenant filed and served her application dated September 24, 2013.

According to documents submitted by the tenant she received a Notice of Rent Increase dated July 29, 2011, increasing her rent by \$17.00 from \$755.00 to \$772.00 effective November 1, 2011. According to the Notice of Rent Increase, the last rent increase to the tenant came into effect on January 1, 2009.

In her application for dispute resolution the tenant claimed payment of the sum of \$1,394.00 calculated as payment of \$41 per month from November, 2010 to the date of the order and a rent reduction in the amount of \$41 per month thereafter. The tenant submitted as part of her evidence a copy invoice from Telus that showed a monthly charge in April 2013 for Telus TV service in the amount of \$31.53.

The landlord disagreed with the tenant's submission that the value of her cable service is her claimed replacement cost of \$41.00 per month. She submitted that Shaw Cable provided a bulk service to the landlord at a cost of \$22.00 per suite and any discussion of compensation must be based on that figure, which the landlord asserted was the actual value of the service. She said that a landlord should not be compelled to provide a more expensive service to a tenant if an existing service is discontinued. She said that Shaw announced to the landlord that the bulk service plan was to be discontinued. The landlord disagreed that the tenant was not compensated for the loss of cable service. The landlord's representative said that the tenant's rent was due to be raised at the time that cable service was discontinued; in the tenant's case the scheduled increase would have raised her rent by approximately \$25.00 per month. The landlord's representative said that:

(The tenant) was approached at that time and asked if it was acceptable to her to have the rent increase voided in exchange for the discontinuation of the cable service. (The tenant) agreed to this and the record will show that her rent was not increased.

The landlord's position is that the tenant was fully compensated by way of the deferral of a scheduled rent increase. The landlord's representative also said that the tenant has pursued this claim in a vexatious manner by starting and then abandoning on several occasions her request for monetary compensation.

The tenant denied that she agreed to an arrangement whereby the landlord would forego a rent increase as compensation for the termination of cable services. The tenant maintained her position that appropriate compensation was \$41.00 per month, being the cost to replace cable services.

Analysis

Three years have passed since the termination of cable service took place on November 1, 2010. The tenant made fitful attempts through her advocates to press the matter with the landlord, but after July, 2011, she let the matter lie dormant for more than two years. The landlord has proceeded on the basis that the tenant no longer contested the matter and that she had accepted the landlord's position that a foregone rent increase that could have been levied in 2010 amounted to adequate compensation for the termination of cable service.

Rather than forego an annual rent increase, it would have been preferable for the purpose of documentation, that the landlord grant the tenant a rent reduction and levy a rent increase; the landlord did not take this step, but I find that the tenant's delay in bringing this proceeding has prejudiced the landlord and made it impossible to fairly adjudicate the matter. I find that the tenant, having delayed for so long in pursuing this matter, must be deemed to have accepted the landlord's position that the foregone rent increase in 2010 compensated her for the termination of cable services. I therefore dismiss the tenant's application for compensation and for a rent reduction.

Conclusion

The tenant's application for dispute resolution is dismissed without leave to reapply.

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: November 18, 2013

Residential Tenancy Branch

