



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Top Vision Realty Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RR, FF

### Introduction

This was a hearing with respect to the tenants' application for a rent reduction and a monetary award. The hearing was conducted by conference call. The named tenants and the landlord's representatives called in and participated in the hearing.

### Issue(s) to be Decided

Are the tenants entitled to a rent reduction?  
Should the tenants be reimbursed for the cost of cable vision?

### Background and Evidence

The rental unit is the upper portion of a house in Coquitlam. The tenancy began on November 1, 2015 for an 18 month term and thereafter on a month to month basis. The monthly rent is \$2,500.00, payable on the first of each month. The tenancy agreement provided that the tenants are responsible for paying utilities. The agreement stated that the tenants will pay 100% of the utilities when the basement is empty and 70% when the basement is rented. The agreement provided that cablevision is included in the rent.

In the tenants' application filed on August 17, 2016, the tenants requested payment of \$411.50, said to be for the cost of cable vision from November, 2015 to August 20, 2016. The tenant requested ongoing compensation for cable in the monthly amount of \$51.52. The tenants said in their application that they wanted the landlord to repair the gas fireplace in the rental unit and if it was not repaired they requested a rent reduction in the amount of \$150.00 per month.

The tenant did not raise the matter of cablevision with the landlord until August, 2016 when he sent an e-mail to the landlord requesting reimbursement for cable TV charges and requesting that the living room fireplace be fixed "asap".

The landlord's representative testified that due to a drafting error, the tenancy agreement mistakenly recorded that cablevision was included in rent. She said that the box on the standard form was checked by mistake. She pointed out that the landlord's online advertisement did not state that cablevision was included in rent. She said that the tenant drafted a preliminary tenancy agreement before the final agreement was signed and it did not mention cablevision. The landlord's representative said that utilities were not included in rent and cable was not intended to be included either. The landlord's representative said she made the same mistake when she drafted the tenancy agreement for the downstairs tenants, but she caught the error and rectified it before the agreement was signed. The landlord submitted that cable service is a personal choice, not an essential service and each user may make different selections and this is one of the reasons why it would not be included as part of rent.

The landlord's representative referred to the fact that the tenants moved in and arranged for their own cable service in November, 2015 and did not raise the matter with the landlord until 10 months later in August, 2016. The landlord submitted that the tenants have raised the issue because the landlord served the tenants with a Notice of Rent Increase. The tenant said that he raised the matter of cablevision with the landlord soon after moving in but he forgot about it until he raised it again by email to the landlord in August. The landlord's representative said that the tenants have complained throughout the tenancy about the cost of utility bills split between the upper and lower unit, with the tenants paying 70% of the amount. The landlord's representative noted that the rental unit consists of 2900 square feet on two levels with five bedrooms, three bathrooms and living and family rooms, whereas the lower suite is a one bedroom 1000 square foot unit.

The landlord's representative said the house is heated by heat pump; there is a gas fired furnace, but there are also some electrical heaters installed in the house. The tenant requested that the gas fireplace in the living room be repaired so the tenants can use it to heat part of the house. The tenants said they wanted to use the fireplace for heat because the electrical heating bill is so high.

The landlord's representative said that the gas fireplace is not in working order and was not working when the tenancy began. The landlord had the fireplace checked by a technician who reported that the unit is too old to be fixed and is unrepairable. The landlord's representative referred to an e-mail from the tenant in November, 2015 wherein he said that:

As per our morning conversation, here are the outcomes:

- Living Room's Gas Fire Place is not working since we moved in:

Susan and I decided to NOT use the Living Room's Gas Fire Place at anytime during our stay at this house. So you don't need to fix it! This is to confirm that, we will NOT be responsible for the Living Room's Gas Fire Place working condition at the time of move out. (reproduced as written)

### Analysis

The tenants requested payment of their basic cablevision charges because the tenancy agreement provides that they are included in the rent. The landlord's representative argued with some force that the inclusion of cable vision was a mistake and it has never been the landlord's practice to include cable service in rent. The landlord's representative submitted that the tenants did not raise the matter and arranged for their own cable service without mentioning it to the landlord until August, 2016.

The landlord is seeking through the introduction of her oral testimony, to provide evidence to alter the terms of the written tenancy agreement by her submission that the inclusion of cable vision was a mistake. I accept the landlord's evidence that cable vision was mistakenly included in the agreement. The mistake in this case was unilateral; it was the landlord's mistake in drafting the agreement and I find that the landlord has not proven on a balance of probabilities that the tenants were aware that the mistake had been made, or that they knew or ought to have known that the landlord did not intend to include cable vision in the rent. I find that this unilateral mistake by the landlord is not capable of rectification and I find that the landlord is obliged to provide cable services as part of rent. Because the services are in place and paid for by the tenants, I find that the tenants are entitled to a monetary award in the amount of \$411.50 for the basic cable only, but not any other service, such as telephone or internet service, for the period from November 2015 to August, 2016. For the remainder of the tenancy, the tenants are entitled to a rent reduction each month in the amount of \$51.52. The reduction for the months of September, October and November amounts to a further \$154.56 and this sum is added to the award requested.

Commencing with the December rent payment the tenants will be entitled to a monthly rent reduction in the amount of \$51.52 and they may deduct the said sum from the monthly rent payment for the duration of the tenancy.

The tenants requested that the landlord be ordered to have the living room fireplace fixed and if not fixed they requested a monthly rent reduction of \$150.00. The gas fireplace is a built in fixture in the rental unit. it was not working when the tenancy began and the landlord's evidence is that the fireplace is so old that it is incapable of being repaired. I note that the tenancy agreement made no mention of a gas fireplace and there is no indication that a functioning gas fireplace was included in the rent. The

tenants specifically confirmed in writing that they did not intend to use the fireplace and the landlord was under no obligation to fix it.

I find that the landlord did not agree to provide the tenants with a working gas fireplace in the living room. The tenant accepted this fact and the landlord is not obliged to repair or to provide a working gas fireplace; this portion of the tenant's application is dismissed without leave to reapply.

The tenants have been awarded the sum of \$566.06. The tenants have been partially successful in their application and I find that they are entitled to recover \$50.00 of the \$100.00 filing fee paid for their application for a total monetary award of \$616.06. This order may be registered in the Small Claims Court and enforced as an order of that court.

### Conclusion

The tenants have been granted a monetary award of \$616.06 and a monthly rent reduction of \$51.52. Their claim for a repair order or a further rent reduction has been 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 09, 2016

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Residential Tenancy Branch