



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC COVE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC OLC PSF RR FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on December 21, 2016. The Tenant filed seeking a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; to Order the Landlord to comply with the *Act*, Regulation, or tenancy agreement; to have the Landlord provide services or facilities required by law; allow the Tenant reduced rent for repairs, services or facilities agreed upon but not provided; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by two agents for the Landlord (the Landlords); the Tenant, the Tenant's Advocate; and an observer. The Tenant and both Landlords provided affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

Each party affirmed they served the other with copies of the same documents that they had served the Residential Tenancy Branch (RTB). Each party acknowledged receipt of those documents from the other and no issues regarding service or receipt were raised. As such, I accepted the relevant evidence submitted from both parties.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Although all submissions made in accordance with the Rules of Procedure have been considered, not all are listed in this Decision.

Issue(s) to be Decided

1. Has the Landlord restricted a service or facility required by law or the tenancy agreement?
2. If so, has the Tenant proven entitlement to monetary compensation for the loss of that service or facility?

Background and Evidence

The Tenant has occupied the rental unit since August 1, 2003 based on a month to month tenancy with the previous owner. As per that tenancy agreement a total rent of \$643.00 (rent \$635.00 plus \$8.00 for parking) was payable on the first of each month. On June 29, 2003 the Tenant paid \$317.50 as the security deposit. The rent has subsequently been increased to \$726.00 effective January 1, 2017.

The rental unit was described as being a five floor apartment building consisting of 85 units. The Tenant's unit was described as being a one bedroom apartment. Ownership and management of the building changed effective May 31, 2016.

A copy of the original tenancy agreement was submitted into evidence by the Tenant. Section 3 of that agreement listed the premises to be rent and the furnishings, equipment, facility, services or utilities included in the rent which included: Cablevision; Window Coverings; Fridge; Heat; Stove; Water; Carpets; and Garbage Collection.

On August 4, 2016 the Landlord issued a letter to the Tenant indicating the satellite television had been discontinued and the Landlord would be offering the Tenant a \$35.00 rent rebate retroactive to August 1, 2016. The Tenant stated she did not receive prior notice of the discontinuation of her cablevision and she did not receive the August 4, 2016 letter until mid-August 2016 when she returned home after a short absence. She noted that the cablevision had been disconnected during her absence.

The Tenant submitted a list of channels that were provided by the previous satellite cablevision provider since August 6, 2013; consisting of 25 channels that were included in her monthly rent. The Tenant submitted written quotes from two of the main cablevision suppliers which were based on the aforementioned list of channels indicating the monthly cost would be between \$84.00 and \$101.92 after taxes. As a result, the Tenant now seeks a rent reduction of \$100.00 per month for the loss of the cablevision service.

The Landlords testified the previous satellite cablevision system was inadequate, outdated, and could not be upgraded so they decided to discontinue the service. The

male Landlord later stated the satellite system broke and they could not get it up and running again.

I heard the male Landlord state that after speaking with his suppliers he was able to negotiate a 20% discount for his tenants if they chose to sign up for telephone, cablevision, and internet services. He stated he offered the Tenant a \$35.00 monthly rent reduction which was based on the "standard cablevision package". He said he calculated the rent reduction based on a monthly fee of \$20.00 plus a \$15.00 rebate. He noted that the building was only set up to receive services from one of the major suppliers, which is the supplier he negotiate the discount with on behalf of all of the tenants.

The male Landlord acknowledged that he did not offer the Tenant a rent reduction or money based on the actual television channels that had been discontinued. I heard the Landlord state the standard cablevision package did not include all of the channels that were provided by the satellite provider; however, the Tenant could purchase bundles, at an additional cost, to add to the standard package if she wanted those channels.

The Landlords submitted they were not aware of the period the discount would be offered; however, they submitted they had been dealing with this service provider for other buildings and the discount was offered after the expiration of those contracts.

The Tenant argued the price stated by the Landlord was a promotional price which may only be offered for upwards of two years. She submitted she was concerned that price would be temporary. She noted the standard package referred to by the Landlords was called the "Essential" package and without the promotional pricing it was \$48.16 per month and did not include the same channels she has had access to since 2013.

The Tenant submitted evidence that her telephone and internet cost were paid for by her employer so there was no advantage for her to bundle services to try and obtain an additional discount. The Tenant now seeks a \$100.00 rent reduction that would cover the cost and taxes for the channels she lost retroactive to the loss of the service which was August 1, 2016.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The undisputed evidence was the Landlords terminated the cablevision service which was provided for in the Tenant's tenancy agreement. Cablevision is not considered an essential service; therefore, if the Landlords wished to terminate that service they were required to serve the Tenant 30 days' written notice, in the approved form, prior to the termination and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from that termination, pursuant to section 27(2) of the *Act*. In addition, I considered Residential Tenancy Policy Guideline 22 which provides that if the landlord restricts a service or facility the tenant would be entitled to a rent reduction equal to a comparable service for which the tenant could obtain.

I find the Landlords breached section 27(2) of the *Act* by failing to provide the Tenant with 30 days written notice prior to the discontinuation of the cablevision service. Furthermore, I accept the Tenant's submissions that the Landlords' offer of a \$35.00 rent reduction was not equivalent to the devaluation of her tenancy agreement or the cost of comparable services for which she could obtain.

Based on the above, I find in favor of the Tenant's application and award her a monthly rent reduction of \$100.00 effective August 1, 2016, pursuant to section 67 of the *Act*. That rent reduction is to continue for every month an equivalent cablevision service is not provided by the Landlords, until this tenancy is ended in accordance with the *Act*. If the Landlords choose to provide an equivalent service in the future they would be required to provide the Tenant with prior written notice in a manner that would not cause the Tenant to break a contract or suffer a financial loss.

The Tenant has succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$100.00**, pursuant to section 72(1) of the *Act*.

The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce their rent payments by any amount the director orders a landlord to pay to a tenant. The retroactive rent reduction and filing fee would be calculated as follows:

August 1, 2016 to March 1, 2017 (8 months x \$100.00) \$800.00 plus \$100.00 filing fee = **\$900.00**.

March 1, 2017 Rent : \$726.00 less \$900.00 = credit balance =(\$174.00)
No rent payable for March 2017.

April 1, 2017 Rent: \$726.00 less credit \$174.00 less \$100.00 = \$452.00

May 1, 2017 Rent: \$726.00 less \$100.00 = \$626.00

As ordered above, the \$100.00 rent reduction will continue every month following May 2017 until such time as the tenancy has ended.

Conclusion

The Tenant was successful with her application and was granted a \$100.00 rent reduction from August 1, 2016 until the end of the tenancy or until an equivalent cablevision service is provided by the Landlords.

This decision is final, legally binding, and 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: February 1, 2017

Residential Tenancy Branch