



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DUNSMUIR ROAD HOLDINGS INC., PACIFIC COVE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC, RR, FF

Introduction

This hearing was convened in response to applications of the tenants joined pursuant to a preliminary hearing Decision (joiner Decision) dated October 25, 2017.

The applications (the tenants) seek a monthly rent reduction for service or facility agreed upon but not provided as per Section 27 of the Act, namely a terminated cablevision service (cable service). The tenants seek a reduction equal to the cost to replace, *"TV Channels previously provided by landlord"*. The tenants also seek compensation predicated on the same cost basis retroactive from when the cable service was terminated in 2016. Seven (7) of the 13 applications also seek recovery of the filing fee.

Both parties attended the hearing. The tenants were represented by legal advocates, whom attended with 6 of the tenants. The landlord's 3 representatives attended with the landlord's legal counsel. The parties acknowledged exchanging their evidence with the other and as submitted to me. The parties were provided opportunity to mutually resolve their dispute to no avail. Both parties gave testimony and were provided the opportunity to present their evidence orally, to ask questions of the other party and make submissions to me.

Preliminary considerations

From the outset of this proceeding it progressively became apparent the claimed common aspects under which the tenants requested the 13 applications joined was a premature consideration. The tenant's advocate explained it was only after receiving the contesting evidence of the landlord that they determine the scope of the required arguments and, other than for a limited number, the differing issues and facts related to each tenancy agreement. The parties did agree that 3 of the tenants were clearly

entitled to receive a cable service from the landlord under the tenancy agreement and their circumstances similar. The parties' positions regarding the remaining 10 are diametrically opposed.

Therefore, it is my decision that this hearing / Decision will only deal with the aforementioned 3 rental units which by agreement of the parties are bona fide recipients of a cable service required by the tenancy agreement and therefore entitled to remedies under the Act in respect to termination of the cable service.

Therefore, this Decision is solely in respect to **rental units 305(GLK), 403(GD) and 603(JDB)**. The remainders are severed and will be heard separately in due course, and for which I am seized.

Issue(s) to be Decided

Has the landlord terminated the cable service without reducing the rent by the appropriate amount? Or, does the rent reduction offered by the landlord appropriately reflect the devaluation of the tenancy agreement resulting from the termination of the cable service?

Is the tenant's claimed rent reduction, for the terminated cable service, reasonably equal in value or amount *to the reduction in the value of the tenancy agreement* resulting from the terminated cable service?

Are the tenants entitled to compensation and/or rent reduction in the monetary amounts claimed?

By removal of the cable service what resulting reduction in the rent reasonably reflects the lessened value of the tenancy agreement?

In this matter the applicants bear the burden of proof.

Background and Evidence

The following relevant evidence in respect to the tenants of rental units 305, 403 and 603 (the tenants) is undisputed.

The tenancy agreements of the tenants state that cablevision (cable service) is included in their payable monthly rents of \$921.00(305), \$962.00(403) and \$890.00(603). From the outset of the tenancies the former owner of the residential building allowed access to the cable service to all tenants in the building through one common unrestricted

system. It is undisputed that the cable service of this matter is not an essential service of the living accommodation nor is it a material term of the respective tenancy agreements.

The residential property came into new ownership of the current landlord in 2016. The current landlord terminated the cable service on July 31, 2016 for a variety of technical issues, with the tenants receiving a letter in early August, 2016 notifying them of its termination and offering each of the 3 subject tenants, “a \$35 monthly rent rebate” from August 2016 onward. Solely the tenant of unit 403 accepted the \$35.00 monthly rent rebate for the terminated cable service of which they have had benefit since August 2016. This tenant submits they accepted only a partial reduction of the rent, “and that the actual value of the service is much higher” – as submitted. The parties acknowledge the latter tenant did not enter into a new written tenancy agreement and the tenant did not orally agree to a change to the rent, however the landlord argues their acceptance of the rent rebate offered by the landlord established agreement to amend or change the payable rent of the tenancy.

The tenants claim that contrary to Section 27(2) of the Act the landlord terminated the cable service without the prescribed 30 days notice in the approved form and did not reduce the rent in accordance with 27(2)(b) of the Act, “in an amount that is equivalent to the reduction in value of the tenancy agreement from the termination of cable services” – as submitted.

The tenants seek an order for a reduction of past rent starting August 2016 and future rent predicated on the cost to replace TV Channels previously provided by the landlord through Bell, in the sum amount of \$112.00 per month inclusive of taxes. The tenant's claim is based on cable service from Telus (sole TV service provider for the building) on a channel for channel replacement cost calculation. The tenants provided a table showing the amount required to order the exact channels from Telus previously available from Bell with extra amounts for channels not offered by Telus. Effectively the tenants seek the applicable compensation for each of the tenants based on their costed calculations to December 2017 of \$1904.00. Moving forward the tenants seek a reduction of the payable rent by \$112.00 each month. Both claims are based on the cost of replacing the previously available cable service offerings. The tenants rely on the provisions of Section 27 of the Act and Residential Tenancy Policy Guideline 22.

The landlord submitted evidence that the cable service which had been provided to the residential property was one that the landlord argued effectively was illegal. Their evidence is that the previous landlord's contractual parameters with the cable service provider (Bell) never authorized them to make the cable service available to the entire

residential property and as a result the previous landlord had struggled to maintain the service through a series of unauthorized upgrades. Upon this discovery and that of technical issues with the equipment, in large part related to the unauthorized usage, the new landlord determined to terminate the cable service entirely for reasons of due diligence.

The landlord argues that a calculation for past and future reduced rent based on \$35.00 per month appropriately satisfies the rent reduction amount prescribed by Sections 27(2)(b) and collaterally for 65(1)(f) of the Act.

Both parties referenced and provided copies of past Arbitration Decisions, however acknowledged I am not bound by these Decisions.

Analysis

The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

Relevant Law (Residential Tenancy Act, Residential Tenancy Regulation)

Definitions

1 in this Act

"**rent**" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

"**service or facility**" includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit:

- (a) appliances and furnishings;
- (b) utilities and related services;
- (c) cleaning and maintenance services;
- (d) parking spaces and related facilities;
- (e) cablevision facilities;
- (f) laundry facilities;
- (g) storage facilities;
- (h) elevator;
- (i) common recreational facilities;

- (j) intercom systems;
- (k) garbage facilities and related services;
- (l) heating facilities or services;
- (m) housekeeping services;

"**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 14 Changes to tenancy agreement

Section 27 Terminating or restricting services or facilities

Section 65 Director's orders Breach of Act, regulations or tenancy agreement

Residential Tenancy Regulation - Schedule - Application of the Residential Tenancy Act, 1

Residential Tenancy Policy Guideline 22 - Termination or Restriction of a Service or Facility,

I find that Residential Tenancy Policy Guideline **22 - Termination or Restriction of a Service or Facility** in part states,

C. RENT REDUCTION

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an Arbitrator may make an order that past or future rent be reduced to compensate the tenant.

D. BURDEN OF PROOF

Where the tenant claims that the landlord has restricted or terminated a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant.

I find that rental unit 403's acceptance of a \$35.00 rent rebate is subject to **Section 14** of the Act and collaterally **Residential Tenancy Regulation -Schedule 1**, which effectively state that the payable rent within a tenancy agreement is an agreed term which unless changed *in writing* by both parties, as prescribed, does not establish a different rent. I find that rental unit 403 may have accepted the landlord's "rent rebate" but in doing so did not establish a reliable change in the rent of the tenancy, nor a new agreement.

Section 27 Terminating or restricting services or facilities, states as follows,

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find the landlord did not provide the tenants with the required notice in the approved form pursuant to 27(2)(a) terminating a service or facility of the tenancy agreement pursuant to 27(2)(b). Regardless, it is acknowledged by the parties the landlord is liable for compensating the tenants from the first day the cable service was terminated.

I find the Act clearly states that on termination of a service or facility the appropriate remedial rent reduction amount should be “equivalent” to *the reduction in the value of the tenancy agreement*. I find that a ‘channel by channel’ replacement cost calculation of the stopped cable service as provided into evidence is not the calculation demanded in 27(2)(b) for determining the monthly rent reduction. I find that the requisite calculation prescribed in 27(2)(b) is one predicated on the question of, “what is the reduction in the *value* of the tenancy agreement resulting from the termination of the cable service”? Or, “by what amount is the *value* of the tenancy agreement (rent) reduced in absence of cable service”? I have not been presented evidence supporting such a calculation.

I have considered the minimal and maximal representations of the parties. I have considered the Act definitions of, “**rent**”, “**service or facility**”, and “**tenancy agreement**”, all of which comprises the *value* of its totality. I find the tenants’ calculation of 12 -13% solely for cable service, extravagant. As a result I do not accept the tenants’ evidence that a rent reduction of \$112.00 reasonably represents the reduced *value* of the tenancy agreement resulting from the termination of the cable service. Therefore, the tenant’s request for the amount of \$112.00 as the remedial monthly rent reduction must fail. None the less, I accept the landlord withdrew a service which was included in the tenants’ rent and accept the position of both parties the tenants are due compensation for past loss of the cable service and future reduced rent for same.

I further accept the landlord’s evidence that the cable service itself and the breadth of the service offerings to which all tenants had access, effectively was illegal and not sustainable. I accept the landlord’s argument that therefore they could not continue providing the same *value* of cable service. I find that on that basis it would be unreasonable to expect the new landlord should be liable to provide an equivalent *value* for cable service moving forward.

On preponderance of the evidence and the totality of factors comprising a *tenancy agreement* I find that \$45.00 reasonably represents the reduction in the *value of the tenancy agreement* resulting from withdrawal of cable service.

As a result of all the above and pursuant to Sections 65(1)(f) I award the tenants of rental units **305 and 603** compensation for loss of cable service from August 2016 to December 2017 in the aggregate amount of \$765.00 (\$45.00 x 17 months). These tenants are also entitled to recover their \$100.00 filing fee for a sum award of **\$865.00**.

As the tenant of 403 has benefitted from reduced monthly rent since August 2016 of \$35.00 I award the tenant of rental unit **403** the difference of \$10.00 per month in the sum of **\$170.00** [(\$45.00 x 17 months) – (\$35.00 x 17) = \$170.00].

I additionally award the 3 tenants of this matter a rent reduction of the payable monthly rent under the tenancy agreement of **\$45.00** commencing the rental period of January 2018.

Conclusion

The applications of the tenants of rental units 305, 403 and 603 are granted in the above terms, which are perfected as follows.

I Order that the tenants of rental units 305, 403 and 603 may deduct their respective awards for the period August 2016 to December 2017 from a future rent in full satisfaction of their award as follows:

Rental unit 305 ,	\$ 865.00
Rental unit 403 ,	\$ 170.00
Rental unit 603 ,	\$ 865.00

I Order that the payable monthly rent for rental unit **305** commencing the **January 2018** rental period is **\$876.00** until changed in accordance with the Act.

I Order that the payable monthly rent for rental unit **403** commencing the **January 2018** rental period is **\$917.00** until changed in accordance with the Act.

I Order that the payable monthly rent for rental unit **603** commencing the **January 2018** rental period is **\$845.00** until changed in accordance with the Act.

The remaining applications of rental units 203, 205, 207, 401, 408, 410, 607, 704, 705, and 709 are severed from the style of cause and will be heard separately. I am seized in respect to these matters. The parties will be notified by the Residential Tenancy Branch as to the date and time of these hearing in due course.

This Decision is final and binding.

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: December 11, 2017

This Decision is amended pursuant to section 78(1)(b)(c) and (1.1)(a) of the Residential Tenancy Act this 13th day of December 2017, as indicated.

Residential Tenancy Branch