



Dispute Resolution Services

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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

Introduction

The tenant's application under the *Residential Tenancy Act* (the Act) seeks a monthly rent reduction for a service or facility agreed upon but not provided pursuant to Section 27 of the Act, namely a terminated cablevision service (cable service). The tenant seeks a reduction equal to the, "*Cost to replace TV Channels previously provided by landlord: \$112.00/mo.*" The tenant also seeks compensation predicated on the same basis retroactive from when the cable service was terminated in 2016.

Preliminary note

This is a reconvened hearing of a matter severed from a previous 'joiner' proceeding heard December 05, 2017 by this Arbitrator respecting similar disputes. The principle facts related to the residential property, the related rental units and the issue giving rise to the related applications share facts respecting the same residential street address, same landlord, and all before this Arbitrator.

Both parties attended the hearing. The tenant attended and was represented by their legal advocates. The landlord's 2 representatives attended with the landlord's legal counsel. The parties acknowledged exchange of new evidence as also submitted to me. The parties were provided opportunity to mutually resolve their dispute to no avail. Both parties provided testimony and were provided opportunity to present their evidence orally, to ask questions of the other party, present witnesses, and make submissions to me. Neither party requested a Summons to Testify. Prior to concluding the hearing both parties acknowledged having presented all the relevant evidence that they wished to present.

Issue(s) to be Decided

Has the landlord terminated a cable service agreed upon or provided, and included in the payable rent, for which a reduction of the rent is now warranted as a result, pursuant to Section 27 of the Act?

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

Is the tenant entitled to the monetary amounts claimed?

In this matter the applicant tenant bears the burden of proof.

Background and Evidence

The relevant evidence in this matter is as follows. The tenancy started December 01, 2015 and is subject to a written agreement of which I have benefit of a copy. The tenancy agreement of the tenant does not expressly state Cablevision (cable service) is included in their payable monthly rent, currently of \$985.00. However, it is undisputed that from the outset of the tenancy 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 tenant receiving a letter in early August, 2016 notifying them of its termination.

The tenant seeks a reduction of past rent starting August 2016 and future rent predicated on the cost to replace all the TV Channels previously provided by the landlord in the sum amount of \$112.00 per month inclusive of taxes. The tenant's claim is based on the sole TV service provider for the building on a 'channel for channel' replacement cost calculation. Moving forward the tenants seek a reduction of the payable rent by \$112.00 each month.

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 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 testified they did not provide the tenant of this matter with the required notice in the approved form pursuant to Section 27 for terminating the cable service, having determined they were not terminating a service which had been provided as part of the payable rent. The landlord testified the tenant was provided cable service, not as part of the payable rent, but strictly on a gratuitous basis in part because the service was unreliable, ultimately unsustainable, but at entering into the tenancy agreement, was also still available to tenants as a single unrestricted system.

In respect to this and relevant other tenancy agreements of the residential property, it is the evidence of both parties that in recent years the landlord intended and sought to distance themselves from an illegal, failing, and unsustainable TV system, while at the same time maintaining a TV service obligation to legacy tenancies. The submitted evidence of both parties is that the landlord employed various methods to do this: did not check the Cablevision box at Term 3 of the agreement, wrote into the agreement a statement making cable service conditional or that it was not included in the rent, and applying label stickers stating the former.

The tenant disputes the landlord's version of facts. They testified that contrary to the landlord's determination, they relied on oral agreement with the landlord at the outset of the tenancy that cable service was included in the ask rent. The tenant testified that unlike today's rental environment when they considered the rental unit they had options available to them in respect to other competitive living accommodations, but that the described cable service at the amount of the asking rent convinced them to take the rental unit. The tenant testified the landlord showed them the cable service and how to access it. They further testified they thought the channel selection of the cable service was of a value so as they could not refuse the unit. The tenant stated they agreed to the tenancy due to the cable service offering without extra to the payable rent. The cable service was accessible to the tenant until it was terminated 8 months later. Contrary to the landlord's assertions the tenant testified that according to their copy (tenant's copy) of the tenancy agreement there were no stipulations placed in term 44. OTHER, but none the less they initialed the term as did the landlord. The tenant

disputes the landlord's assertions they agreed with the statement on a printed label sticker (the sticker) as found on the landlord's copy of the agreement, placed at the term, and initialed; or, that they peeled off the sticker, or it fell off. The label sticker on the landlord's copy states:

Welcome to smoke free premises, suites, decks and outside environment always. Building TV systems are proprietary, not included in the rent subject to removal anytime. Monthly (12) post dated checks required when requested. – as stated.

The tenant testified the landlord completed the tenancy agreement and they (tenant) simply initialed and signed where the landlord signed. They testified they relied on the landlord's oral representations the cable service was part of the tenancy and that this representation would be honored moving forward.

The tenant presented witness, JE, another tenant of the residential property. JE testified they were told by the landlord they could access free cable service solely by, "plugging into the wall", without requirement of a set box. The witness went on to testify that in their copy of the tenancy agreement there was no "sticker" at term 44 of the agreement referencing the cable service as conditional. The witness relied on the landlord's representative saying cable service was included with the tenancy.

The landlord testified the tenant's initials at term 44 supports the tenant signed *something* and that the *something* was the landlord's stickered stipulations which included the words that the cable service (system) was not included in rent. The landlord argued that otherwise, term 3. RENTAL UNIT TO BE RENTED of the tenancy agreement leaves no ambiguity that Cablevision was never agreed to as part of the payable rent, as the box for Cablevision was not checked following the printed statement:

No furnishings, equipment, facilities, services, or utilities will be provided by the landlord and included in the rent EXCEPT those checked below, which the tenant agrees are in good condition and which the tenant and his guests will use carefully.
– as written.

Both parties testified of and submitted into evidence arguments respecting rules of *Parole Evidence* and oral terms of contracts. The landlord argued that the parties by their hand agreed to the written contract (tenancy agreement) intending it to be the final word, and that it is not ambiguous respecting cable service. And, therefore the meaning of the written contract cannot now be altered through reliance on previous or contemporaneous oral declarations. The tenant argued that there may be a presumption against admitting oral evidence to alter the written agreement, but that

evidence in support of an oral agreement in this matter should be admissible as there is evidence the written tenancy agreement was not the whole agreement because they claim the parties clearly orally agreed that cable service was included in the payable rent before setting down their signatures in the written agreement.

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.

In this matter the applicant tenant bears the burden to prove on balance of probabilities that the cable service was agreed provided as part of the payable rent from which its value is to be reduced. I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

I find that for the purposes of this matter pursuant to **Section 27(2)(b) and 65** of the Act that cable service is a qualifying **service or facility** stipulated in the **Definitions** of the Act.

I find the evidence is undisputed that cable service was available to all tenant(s) of the residential property by the landlord, irrespective of whether the tenancy agreement expressly stated it, implied it, was verbally agreed, otherwise paid separately, or otherwise provided gratuitously. The evidence is undisputed that the means of accessing the cable service was simply by, "*plugging into the wall*". I find that no evidence has been presented the previous landlord was interested in controlling access to the cable service from the outset of any tenancy. The landlord has argued this supports the cable service was gratuitous, and not tied to payable rent. The tenant has argued it supports the landlord provided the service (to the time of disconnection) to comply with the tenancy agreement. I find logic in both positions.

I find the arguments related to *the sticker* evidence make limited sense. I find the tenancy agreement is a 'carbonless' duplicate document or NCR form, and that the tenant and landlord would have had to initial the landlord's copy and thus then transferred to the tenant's copy. The application of a sticker defeats the operation of this type of form if an identical sticker is not placed on all copies of the form and the individual copies then each initialled by the parties. I have not been presented evidence this occurred and in that absence I have placed no evidentiary weight on the entirety of the sticker evidence.

I find the previous landlord installed a TV service system. And, if I accept the tenant's testimony they had options where to rent, and the cable service for this tenancy was a deciding factor, then I must reasonably accept gratuitous cablevision as an equally competitive measure. Additionally, I appreciate it is not always reasonable for a prospective tenant to be expected to accurately decipher the true meaning when told *cablevision is free (gratuitous)*, or *cablevision is included*, or *cablevision is provided with the rental unit*, or *there is no charge for cablevision*. I find they can all be understood to mean the same thing: cable service comes with the rental unit. I find the existence or provision of the cable service is not sufficient evidence to prove an oral agreement cable service was included in the payable rent.

While I may accept that to the tenant's understanding there was an oral agreement cable service is included in the payable rent, *agreement* means that both parties must clearly be of the same understanding and clearly exhibit that understanding. I find the tenant has not met their burden sufficiently establishing there was oral *agreement* cable service in this matter was included in the payable rent. Therefore I cannot wholly rely on the tenant's contemporaneous agreement argument regarding cable service and the payable rent. As a result, unless the written or express terms are wholly ambiguous as to what the parties set their hand as their agreement I find I must reject the tenant's parole evidence.

I accept the evidence of the landlord that near the outset of the written tenancy agreement of this matter at term 3. RENTAL UNIT TO BE RENTED, it states:

No furnishings, equipment, facilities, services, or utilities will be provided by the landlord and included in the rent EXCEPT those checked below, which the tenant agrees are in good condition and which the tenant and his guests will use carefully.
– as written.

In this matter, it is agreed by both parties that Cablevision is not checked below the above statement indicating it is included in the rent. I find the evidence is that a cable service is clearly excluded from inclusion in the payable rent. Therefore, I prefer the evidence of the landlord in accepting the landlord's argument that the express terms of the agreement for this matter are not ambiguous and therefore the integrity of the written agreement should be preserved as the full and completely integrated agreement, and final say in this dispute.

I find that the cable service is not included in the payable rent, from where if terminated, a mandated reduction would be required in accordance with the Act. As a result of all the above I must **dismiss** the tenant's application without leave to reapply.

Conclusion

The tenant's application is dismissed, without leave to reapply.

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: March 27, 2018

Residential Tenancy Branch