Dispute Resolution Services

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 advocate. 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 of the relevant evidence 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 May 15, 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 $983.00. 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.

The tenant testified that contrary to the landlord's determinations, they relied on oral and implied representation at the outset of the tenancy that cable service was included in the ask rent. The tenant testified that the landlord's manager, "Rad" told them Cablevision was included and showed them where it could be accessed. The tenant's position is that cable a service was an implied term of the tenancy agreement included in the payable rent.

It is the evidence of both parties that in recent years the landlord intended and sought to distance themselves from a failing, unsustainable, and illegal cable 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 various phrases making cable service conditional or that it was not included in the rent, and applying label stickers stating the former.

In the tenant's affidavit they state that another tenant informed them that cable service was included as part of rent, and with "Rad" pointing to the cable service they were of the impression cable services were included. The tenant further states they did not notice the hand written entry in Term 44 of the tenancy agreement effectively stating that cable services were not included in rent, and did not initial same, although the tenant does not dispute their copy includes the referenced hand written entry. The tenant's affidavit also states the landlord did not state cable services *were not* included as a term.

The landlord testified the tenant's initials above term 44 supports the tenant would have seen the hand-written statement below it stating that cable services were not included in rent and acknowledged neither party initialed it. 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 argued their contrasting versions respecting the tenant's assertion of an implied term of the tenancy agreement vis a vis the cable service. The landlord testified as to their evidence of the courts' position respecting implied terms where they conflict with express terms. The landlord argued that the tenancy agreement expressly excludes the cable service as included in payable rent, and that there is no agreed presumed intention written in the tenancy agreement that requires support by upholding an implied term. And further, that there was no

obvious oversight in the landlord's exclusion of cable service from the tenancy agreement. The landlord argued the tenant did not pay attention to the terms of the agreement, choosing to ignore the agreement before them and therefore it cannot be argued that it should go without saying in the face of an expressed term at 3. The landlord further indicated that the tenant's evidence from the affidavit of CMW confirms the landlord's express intention to differentiate newer entered tenancy agreements by written exclusion of cable services from future guarantee given the precarious nature of the service.

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 that on balance of probabilities 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 any agreement or understanding. The evidence is undisputed that the means of accessing the cable service were available to this tenant as shown to them. I find that if the (previous) landlord was sincerely interested in controlling access to the cable service from the outset of any tenancy they could have done so. I accept the landlord chose to allow it while available.

In this matter I find the tenant states in their affidavit they relied on the information of another tenant that cable services were included in rent, and subsequently formulated impression this was fact. I find the existence and availability of the cable service, or an impression that cable service is included in the payable rent is not sufficient evidence to prove an implied term of the contractual agreement. While I may accept how the tenant arrived at their understanding I find its premise is unreliable in the face of expressly stated terms.

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 and that exclusion is unambiguous. Therefore, I prefer the evidence of the landlord the written tenancy agreement is the full and wholly integrated agreement, and final say in this dispute. I find the tenant has not met their burden sufficiently establishing cable service in this matter was included in the payable rent.

I find that the cable service is not included in the payable rent from where, if terminated, a mandated reduction would be required. 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 26, 2018

Residential Tenancy Branch