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. The tenant further seeks recovery of their filing fee.

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. It must be known that principle facts related to the residential property, the related rental units and the issue giving rise to all the applications are shared facts respecting the same residential street address, same landlord and all before this Arbitrator, and therefore relevant excerpts or relevant entries from the related files of this matter are used intentionally.

Both parties attended the hearing. The tenant was represented by 2 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 they had presented all of 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 in July 1973 and the current payable rent is $948.00. The parties agree the tenancy is the subject of a written agreement between them, of which I have been provided a copy. The parties agree the tenancy agreement is silent in respect to cable service(s) or Cablevision.

The tenant testified that since the outset of the tenancy that TV service was included in the payable rent. The tenant testified that the landlord originally told them TV service was included and it has always been accessible by them. The tenant's position is that TV service or Cablevision or subsequent iteration was/is an oral and implied term of the tenancy agreement included in the payable rent. The tenant submits that while cable service is not indicated in the agreement as part of the payable rent cable service should be interpreted as an oral and implied term of the agreement as access to TV service was initially made available to the tenant and that it was received without question and included in the payable rent for the following 43 years.

The landlord argued the tenancy agreement clearly does not state or provide for cable service at all and therefore is not part of the payable rent, and further that there is not reliable evidence of oral or implied terms respecting cable service. The landlord argued, and also provided an article, stating that in 1973 TV service was "free" via antenna and therefore not part of the tenancy agreement. And, in 1995 the landlord transitioned the tenant over to a building-wide satellite system, "for free" and that any television signal has always been provided to the tenant and all tenants on a gratuitous basis. The landlord argued the tenant was never told nor was it ever implied that television, and later cable service, was included as a value-added addition to the

payable rent. Therefore, any finding that it was included in the rent should amount to value of $0.00.

The tenant testified that if they ever had a problem in respect to their television signal the cablevision provider told them they were required to go through the building manager. Prior to the termination of the cable service they wholly relied on the array of channels they could access as their “window” to the outside world as they do not leave their rental unit due to their seniority and their health.

It is undisputed the former owner of the residential building allowed access to the cable service to all tenants in the building through one common unrestricted system. None the less the landlord argued that for a reduction in the value of the payable rent or tenancy agreement to occur the tenant must prove the value of the service in question was first included in the payable rent and their position is that the cable service had no value as it was not provided as a cost within the payable rent.

The landlord submitted that 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 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, later in part because the service was unreliable, ultimately unsustainable, but remaining available to tenants as a single unrestricted system until disconnected in July 2016.

In respect to this and purportedly other tenancy agreements of the residential property, it is the evidence of both parties that in the last 5 years the landlord intended and sought

to distance themselves from a an illegal, failing, and unsustainable TV system, while at the same time maintaining a TV service obligation to certain legacy tenancies.

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 argues the tenant is not entitled to a rent reduction or compensation for a service the tenant has never paid for and therefore there is no complimentary portion of rent to be reduced.

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 it is likely, 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.

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 that for the purposes of this matter pursuant to Section 27(2)(b) and 65 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 television and cable service have always been available to this tenant.

I find that when there is a dispute between parties in respect to an agreement or terms thereof which are at odds of the written agreement or are claimed in addition to a standard term required for an agreement it is available to assist an Arbitrator to look at the conduct of the parties and the discussion around the time the agreement was entered into; in this matter in 1973. In the absence of evidence of an express term in dispute the tenant received a television signal by the means of the day from the outset of the tenancy and the landlord progressively transitioned the tenant to later versions of television viewing service by whatever name adopted. I have not been presented reliable evidence the landlord explicitly ever termed the television service they provided to this tenant for 43 years as 'free'. However, I accept that any service the tenant received from the outset of their tenancy transitioned, to what inevitably was a more sophisticated service at a commensurate cost to the landlord in 1995 and with which the tenant was provided seamless television service at no additional increase to the payable rent. While I may understand the landlord's argument that this can be interpreted as evidencing a service at $0.00 to the tenant, I find it is more likely that it reflects the landlord's obligation that a television signal was intended provided to the tenant as part of their payable rent.

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 terminated cable service as provided into evidence by the tenant 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 considered the representation of the tenant and the landlord in respect to the would-be *value* of a rent reduction. I have considered the Act definitions of**, "rent", "service or facility",** and **"tenancy agreement"**, all of which I find comprises the totality of the tenancy agreement. I find the tenants' calculation of 12 % solely for cable service, in contrast to the totality of the value of the entire tenancy is extravagant. I am also mindful that any agreement respecting a service such as a television signal is rarely, if

ever, defined down to a channel for channel obligation as this type of service is notorious for changes. As a result I do not accept the tenants' evidence that a rent reduction of $112.00 based on specific channels reasonably represents the reduced *value* of the tenancy agreement resulting from the termination. None the less, I accept the landlord withdrew a service which was included in the tenant's rent and is 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 paper *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 tenant compensation for loss of cable service from August 2016 to March 2018 in the aggregate amount of **$900.00** ($45.00 x 20 months). I additionally award the tenant a rent reduction of the payable monthly rent under the tenancy agreement of **$45.00** commencing the rental period of April 2018.

Conclusion

The application of the tenant is granted in the above terms, which are perfected as follows.

I Order the tenant may deduct their award of **$900.00** for the period August 2016 to March 2018 from a future rent in full satisfaction of their award for loss.

I Order that the payable monthly rent commencing the **April 2018** rental period is **$903.00** until changed in accordance with the Act.

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 13, 2018

Residential Tenancy Branch