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, FF

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. 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. The parties were provided opportunity to mutually resolve their dispute to no avail. 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 October 15, 2013 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 $895.00. However, from the outset of the tenancy 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.

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 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 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 before entering into their tenancy agreement they resided with a roommate on the same residential property and from whom they heard they were provided free cable service. The tenant testified that upon being offered their own rental unit the former property manager, Rad, "told me I had free cable". They testified not reviewing their tenancy agreement at signing as they trusted the property manager, Rad. The tenant additionally testified that they first learned of their cable service being in jeopardy of discontinuation when they were told as such by the landlord while acting as a relief manager. At which time they were instructed to insert into the tenancy agreements of the day wording to the effect that cable service was not guaranteed and further not to check the Cablevision checkbox on the first page of the agreement. The tenant acknowledged that her own tenancy agreement does not contain a checked box for Cablevision at Term 3.

The landlord submitted evidence the cable service which had been provided to the residential property was one 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 submitted that cable service was provided to this tenant gratuitously and not part of the payable rent. It was free. The landlord provided a sworn affidavit from the property manager, Rad, refuting the tenant's testimony, stating that when they showed the unit to the tenant they did not tell them that cable service was included in the rent, but rather that it was free and could be removed at any time, and that if Cablevision was included they would have checked the respective box at paragraph (term) 3.

The landlord argued that 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 checkbox 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 interpreted through the use of 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 has been determined to have merit in matters involving 'form contracts'. The landlord argued their submissions authority on parole evidence clearly state that the integrity of express terms cannot be defeated by assertions of alleged contemporaneous agreement. Both parties provided that for there to be *oral agreement* both parties have to mutually arrive at or acknowledge the same meaning or understanding. Which in this matter means the parties would have had to orally be in agreement that cable service was included as part of the payable rent in order to establish an oral term.

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. I find the provision or availability of the cable service is not sufficient evidence to prove an oral agreement that cable service was included in the payable rent. I find it is not always reasonable for a prospective tenant to be expected to accurately decipher the exact intention between being told *cablevision is free (gratuitous),* cablevision *is included, cablevision is provided with the rental unit, or there is no extra charge for cablevision*. I find that regardless of the actual meaning or intention it can be understood to mean cable service comes with the rental unit.

While I may accept that to the tenant‘s understanding there was an oral term of cable service as part of the payable rent I find that *agreement* means that both parties must be of the same mind and understanding. In this matter the tenant and the landlord have clearly provided contrasting evidence of their respective positions at the outset of this tenancy. Unless the written or express terms are wholly ambiguous as to what the parties set their hand as their agreement I must reject the tenant’s parole evidence of an oral agreement.

I find the evidence is that at 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 as indicating its inclusion in the rent, and there has been much said about this term. I find that an unchecked box, standing alone without context or within ambiguous context could give rise to interpretation against the author or offeror of the agreement. However, in this matter I find there is more than just an unchecked box to consider in that the unchecked box can only be read in conjunction with the ancillary statement above it, which is unambiguous in saying that with the exception of those services or facilities checked no other is included in the payable rent. I find this an unequivocal express term in the agreement effectively saying that the payable rent is not in exchange for cable service. On acceptance of the agreement by the tenant the parties established a contractual tenancy. In the absence of ambiguity of the express term referencing Cablevision I find that a contemporaneous oral agreement argument must fail. I find the tenant has not sufficiently met their burden to reliably establish the existence of an oral term of the agreement, that cable service was agreed included in the payable rent. Rather I find that a cable service is clearly excluded from the payable rent.

Therefore, I prefer the evidence of the landlord 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 integrated agreement. 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 28, 2018

Residential Tenancy Branch