



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

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. 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 tenants attended and were 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 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 December 01, 2015 and is claimed by the parties to be subject to a written agreement between the parties, of which I have been provided a copy. The payable monthly rent is \$1185.00.

The tenant argued that cable service, while not indicated as part of the payable rent in the written agreement, should be interpreted as an implied term of the parties that it is included in rent. The landlord argued the tenancy agreement clearly does not provide for cable service as part of the payable rent with express terms excluding it, including a label sticker (sticker) at term 44 of the agreement which states that cable service is not included in the rent.

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.

It must be noted that non-preprinted terms placed in the prepared agreement are solely initialed by the landlord. It must further be noted the agreement is solely signed by the landlord's representative. The parties agree the tenant's son (and a tenant of the residential property) arranged with the landlord for his parents to move into the rental unit. The tenants testified they moved from Ontario as a result. The landlord submitted their representative left the tenancy agreement with the tenant's son and by affidavit state the tenants never did sign or return the agreement now submitted. Regardless, the landlord claims their representative placed a sticker at term 44 but that on the tenant's copy it has been peeled off or has fallen off. The tenants claim their copy of the agreement never contained a sticker. In respect to the cable service the tenants testified their son had cable service and they too received it without an extra charge. They further testified the landlord's representative told them the cable service "was connected" and useable. The tenants testified they were able to receive cable service

accessing an array of channels until the cable service system was disconnected in 2016. The parties presented complimentary statements there could not have been an oral agreement respecting the tenancy as the parties never spoke until after the tenants moved into the unit. The tenant argued the submitted written agreement is not a full representation of the agreement between the parties with cable service as an implied term of the agreement; that is, it went without saying that it was part of the tenancy agreement. The landlord argued that the payable rent of \$1185.00 does not include any consideration for cable service as the service was provided gratuitously for reasons. They further argued the written agreement does not expressly state Cablevision (cable service) is included in the payable monthly rent and that Cablevision is excluded at term 3 of the written agreement which states,

3. RENTAL UNIT TO BE RENTED

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.

However, 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 for many years, which the tenant submitted that in one tenancy for over 40 years.

The landlord submitted evidence 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 still available to tenants as a single unrestricted system.

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.

The tenant testified that contrary to the landlord's determinations, they relied on their son's information as an existing tenant receiving cable service in determining it was included in the payable rent; and, to them this was ultimately reinforced by the landlord's manager, "Rad" telling them Cablevision was connected.

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 were available to this tenant and it was explained to them.

I find that general principles of contract law apply to tenancy agreements. I accept the parties' submissions that an oral contract or oral agreement does not apply in this matter. I find the parties intended for the landlord's prepared tenancy agreement document to be their mutual representation of agreement. The tenant paid the security deposit, moved in, and satisfied the payable rent as set down in the agreement document. While I accept the landlord had a duty to formality to ensure the acceptance of the terms of the agreement, in this matter I find the tenant's receipt of the tenancy agreement and lack of their signature or 'silence' by the tenant as acceptance by them of the agreement. While I may accept how the tenant arrived at their understanding vis a vis the cable service I find their understanding or solely the existence of cable service is unreliable to establish an implied term to the agreement in the face of expressly stated terms. I find the tenant has not sufficiently met their burden establishing cable service in this matter was included in the payable rent.

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 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: April 04, 2018

Residential Tenancy Branch