



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

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. Both parties provided testimony and were provided opportunity to present their submitted 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 June 01, 2015 and is subject to a written agreement of which I have benefit of a copy. The payable monthly rent is currently \$1002.00. The parties agree the tenancy agreement does not expressly state Cablevision (cable service) is included in the payable monthly rent. 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 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 an oral statement from the landlord's representative named "Chuck" in April 2015. The tenant testified that "Chuck", also a tenant of the residential property filling in for the regular business manager, told them cable was included in the rent and showed the tenant access at the wall. The tenant testified being told the cable service was originally installed in order to accommodate viewing of the entrance area of the residential property as a security feature. The tenant's testimony is that they quickly went over the agreement with the landlord before signing it. In the tenant's affidavit they state that in their experience the cable service did not appreciably change up to the time of disconnection. The tenant submitted that when they signed the tenancy agreement there was no label sticker (sticker) at Term 44. OTHER, but none the less they initialed the term to confirm the term as blank and for lack of knowing different. The tenant testified that when they later received their copy of the agreement they noticed the sticker in the space of term 44 for the first time but did not say anything. The referenced sticker on the copies of the parties state:

**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's position is that is an oral term of the tenancy agreement that cable service is included in the payable rent.

The landlord argued that term 3. of the agreement, RENTAL UNIT TO BE RENTED 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 versions respecting the tenant's assertion of an oral term vis a vis cable service. The landlord argued their evidence of the courts' position respecting contemporaneous understanding or agreement where they conflict with express terms. The landlord argued the tenancy agreement expressly excludes the cable service as included in payable rent, and 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 express terms despite laying their hand to initial and sign the agreement. Therefore, the tenant cannot argue that their oral term should be accepted in the presence of confirmed expressed terms.

## **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](http://www.gov.bc.ca/landlordtenant).*

In this matter the applicant tenant bears the burden to prove the likelihood, on balance of probabilities, that the cable service was agreed provided as part of the payable rent from which its value is required 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 shown to them. I accept the landlord's testimony they chose to allow it while available.

In this matter I find the tenant states in their affidavit they relied on the oral information of another tenant, and that of the substitute manager that cable service was included in rent. Further, that despite their initials at Term 44, that portion of the tenancy agreement was originally blank and only later populated. I find the tenant's assertion they initialled a term absent of content so as to confirm its lack of content does not make sense and therefore find this version unlikely. I find the tenant has not reliably supported that the landlord's representative stated cable service was part of the payable rent. While I may accept how the tenant arrived at their understanding regarding the cable service I find they have not sufficiently established the existence of a contemporaneous oral term in the face of an expressly stated term.

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.

I find both parties agreed that Cablevision is not checked below the above statement indicating it is included in the payable rent. I find the evidence is that a cable service is clearly excluded from the payable rent and that exclusion is unambiguous. 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