



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacifica Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 25, 2020 (the "Application"). The Tenant applied to reduce rent for repairs, services or facilities agreed upon but not provided.

The Tenant appeared at the hearing. S.T. and C.H. appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties and the documentary evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Tenant entitled to a reduction in rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started June 01, 2016. The market rent for the rental unit as set out in the tenancy agreement is \$1,050.00 per month due by the first day of each month. The agreement is signed for the Landlord and by the Tenant.

The Tenant sought a rent reduction of \$100.80 per month due to loss of cable.

The Tenant testified as follows. She moved into the rental unit May 27, 2016. She had cable at that time. The tenancy agreement did not include the cable or the dishwasher and she contacted the person who did up the tenancy agreement for the Landlord about this. This person said he would make an addendum and would have her pick it up. She agreed to this. She waited two weeks but did not receive anything. She contacted the Landlord who said the person had moved. She told the Landlord she needed a proper tenancy agreement and spoke to them about the cable and dishwasher. She never received the addendum promised to her.

The Tenant further testified as follows. She had cable starting from when she moved into the rental unit until July 31, 2020. She has obtained the comparable cable package and submitted the bill showing it costs \$90.18 plus tax. She has been paying for cable since August 01, 2020.

The Tenant submitted that cable is an implied service in the tenancy agreement given the length of time she was provided cable. The Tenant testified that she has other tenancy agreements for other tenants in the building showing cable was included in their tenancy agreements.

S.T. testified as follows. The Landlord had a cable agreement with Shaw which ended July 31, 2020. Any tenant who had cable included in their tenancy agreement should have had an addendum about cable. The Landlord looked at tenants' files and credited tenants \$50.00 if they had cable included in their tenancy agreement. The Tenant did not have an addendum about cable. The Tenant was provided cable, but it was not part of the tenancy agreement. Given there was no written documentation about cable being included in the tenancy agreement, the agents of the Landlord proceeded as directed and the Tenant's cable was cut.

S.T. stated that she understood why the Tenant would think cable was an implied term of the tenancy agreement but there is no documentation proving this. S.T. submitted that cable is not an essential service and is a luxury.

S.T. agreed the Tenant had cable until July 31, 2020. S.T. agreed the cable was cut off July 31, 2020. S.T. agreed the cable service reflected on the bill submitted by the Tenant is a comparable service.

The Tenant submitted a bill showing she is paying \$90.00 plus tax for cable.

The Tenant submitted a letter from Shaw about cable being provided under a bulk agreement with the Landlord/building.

Analysis

Section 1 of the *Residential Tenancy Act* (the “*Act*”) includes the definition of a tenancy agreement and states:

"tenancy agreement" means an agreement, whether written or **oral**, express or **implied**, between a landlord and a tenant respecting possession of a rental unit, use of common areas and **services** and facilities, and includes a licence to occupy a rental unit... (emphasis added)

A “service or facility” is also defined in section 1 of the *Act* and includes cable.

Section 27 of the *Act* states:

Terminating or restricting services or facilities

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.

Section 65(1)(f) of the *Act* states:

65 (1) Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders...

- (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

Policy Guideline 22 deals with termination or restriction of a service or facility and states at page two:

C. RENT REDUCTION

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

If the tenancy agreement doesn't state who is responsible for any added service or facility, not provided by the tenant, after the commencement of the tenancy, and there is a cost involved in obtaining the service or facility, the landlord is responsible for the cost, unless the landlord has obtained the written agreement of the tenant to be responsible for the cost.

Where there is a termination or restriction of a service or facility for quite some time, through no fault of the landlord or tenant, an arbitrator may find there has been a breach of contract and award a reduction in rent.

Where there is a termination or restriction of a service or facility due to the negligence of the landlord, and the tenant suffers damage or loss as a result of the negligence, an arbitrator may also find that the tenant is eligible for compensation for the damage or loss.

- See also Policy Guideline 16: Compensation for Damage or Loss

D. BURDEN OF PROOF

Where the tenant claims that the landlord has restricted or terminated a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant.

There are six issues which must be addressed by the landlord and tenant.

- whether it is a service or facility as set out in Section 1 of the Legislation;
- whether the service or facility has been terminated or restricted;
- whether the provision of the service or facility is a material term of the tenancy agreement;
- whether the service or facility is essential to the use of the rental unit as living accommodation or the use of the manufactured home site as a site for a manufactured home;
- whether the landlord gave notice in the approved form; and
- whether the rent reduction reflects the reduction in the value of the tenancy.

I am satisfied the provision of cable was an implied term of the tenancy agreement for the following reasons.

The Tenant testified that she discussed cable being included in her tenancy agreement with agents for the Landlord at the start of the tenancy and that the Landlord never sent the cable addendum as agreed upon. I did not understand S.T. to testify that this did not occur. Nor did S.T. explain how she would have known whether this occurred, other than to state that there currently is no cable addendum on the Tenant's file.

Further, the Landlord provided cable from the outset of this tenancy and for the past four years.

As well, although the tenancy agreement does not state that rent includes cable, cable is not referred to at all under term 5. I find this relevant because the tenancy agreement does not show that the parties contemplated whether cable was included and determined that it was not, the tenancy agreement is silent on the issue of cable.

I also note that S.T. acknowledged she understood why the Tenant would think cable was provided as part of the tenancy agreement.

In these particular circumstances, I am satisfied the provision of cable was an implied term of the tenancy agreement.

I note that whether cable is essential or a “luxury” is not relevant as whether a service is essential simply goes to whether the Landlord can terminate it, not whether the Landlord must reimburse a tenant when it is terminated.

There is no issue that the Landlord stopped providing cable July 31, 2020 as the parties agreed on this. There is no issue that the cable shown on the bill submitted is a comparable service as the parties agreed on this.

I am satisfied section 27(2) of the *Act* applies and the Landlord must reduce the Tenant’s rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination of the cable. Based on the bill submitted, I am satisfied that the equivalent amount is \$90.00 plus tax which equals more than the \$100.80 sought. However, the Tenant confirmed she is seeking a reduction of \$100.80 starting August 01, 2020 and this is what I allow.

Pursuant to section 65(1)(f) of the *Act*, I order that the Tenant’s rent be reduced by \$100.80 each month starting August 01, 2020. Given this, I find the Tenant is entitled to reimbursement of \$403.20 for August to November rent. The Tenant can deduct this \$403.20 from one future rent payment pursuant to section 72(2) of the *Act*. The Tenant can also reduce rent by \$100.80 starting December 2020.

Conclusion

The Application is granted.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 30, 2020

Residential Tenancy Branch