Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL REAL ESTATE SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RR, MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on October 18, 2020 wherein the Tenant sought the following relief:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on October 16, 2020 (the "Notice");
- an order for a rent reduction for services or facilities not provided;
- monetary compensation from the Landlord in the amount of $4,710.72;
- recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 11:00 a.m. on January 12, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?

2. Is the Tenant entitled to monetary compensation and a rent reduction for services or facilities not provided?

3. Should the Tenant recover the filing fee?

Background and Evidence

The tenancy began January 1, 2008. Rent was originally $1,500.00. At the time of the hearing the rent was $1,736.00.

The Tenant fell into arrears of his rent payments during the Specified Period of March 18, 2020 and August 17, 2020, following which the Landlord issued a repayment plan on August 26, 2020 (the "Repayment Plan"). The Repayment Plan included five equal installments of $1,458.00 payable from October 2020 to February 2021.

The Notice was served on the Tenant in person on October 16, 2020. The Notice indicated that the outstanding rent was $11,352.00. Included in this sum was $1,736.00 for September and $1,736.00 for October. The balance represented amounts owing pursuant to the Repayment Plan.

The Tenant paid $3,000.00 on October 16, 2020 and $472.00 on October 17, 2020 such that the Tenant paid the outstanding amounts for September and October within five days of receipt of the Notice. The Tenant did not pay the amounts owing pursuant to the Repayment Plan. As previously noted, the Tenant applied for dispute resolution on October 18, 2020.

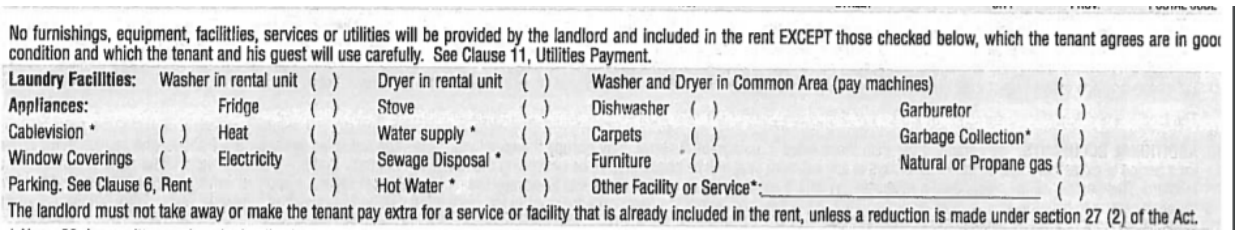
The Tenant testified that the Landlord refused his rent payments as the Landlord did not withdraw the September and October rent payments through his preauthorized automatic withdrawal. The Tenant further submitted that the Landlords' Repayment Plan was invalid as the Landlord sought repayment of all amounts owing as of February 2021 which is sooner than that provided for in the regulations. Upon receipt of the Notice, the Tenant contacted the Landlord and informed them that the Repayment Plan was invalid. The Tenant testified that the Landlord did not provide the Tenant with another Repayment Plan or respond to his concerns about its validity. The Tenant also noted that the Landlord did not make any attempt to withdraw the funds pursuant to the Repayment Plan. The Tenant testified that he was prepared to pay the funds if the repayment plan was found to be valid.

The Tenant sought an Order canceling the Notice on the basis that he Repayment Plan was invalid, the Landlord refused to withdraw his September and October rent payments, and the fact he paid the September and October rent within five days of service of the Notice.

The Tenant also sought a retroactive and ongoing rent reduction for services not provided. Specifically, the Tenant alleged that the Landlord discontinued his cable service without corresponding compensation. He testified that his rent included cable and he had cable from the start of his tenancy in 2008 until September 2016. The Tenant conceded that cable was not checked off as an included item in section three of his tenancy agreement; however, he noted that this section was left blank that the following other items were included in his tenancy yet not checked off:

- window coverings;
- fridge;
- heat;
- stove;
- water supply;
- sewage disposal;
- hot water;
- washer and dryer in the common area; and,
- garbage collection.

For clarity I reproduce that section as it appears in the standard form tenancy agreement:



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 guest will use carefully. See Clause 11, Utilities Payment.

Laundry Facilities:	Washer in rental unit	( )	Dryer in rental unit	( )	Washer and Dryer in Common Area (pay machines)						( )
Appliances:		Fridge	( )	Stove	( )	Dishwasher	( )			Garburetor	( )
Cablevision *	( )	Heat	( )	Water supply *	( )	Carpets	( )			Garbage Collection*	( )
Window Coverings	( )	Electricity	( )	Sewage Disposal *	( )	Furniture	( )			Natural or Propane gas	( )
Parking. See Clause 6, Rent			( )	Hot Water *	( )	Other Facility or Service*:_____					( )

The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under section 27 (2) of the Act.

In response to the Tenant's claim, the Landlord's Property Management Assistant, A.N., testified as follows. He confirmed that the Repayment Plan included five equal installments of $1,458.00 payable from October 2020 to February 2021. A.N. further confirmed that the outstanding rent on the Notice included rent owing during the Specified Period and which was included in the Repayment Plan. A.N. also confirmed

that the Tenant paid $3,000.00 on October 16, 2020 and $472.00 on October 17, 2020 such that the Tenant paid the outstanding rent for September and October 2020.

With respect to the Tenant's request for a rent reduction for loss of cable, A.N. confirmed that it was the Landlord's position that as cable was not included on the tenancy agreement the Tenant was not entitled to any compensation. A.N. further submitted that it was the Tenant's responsibility to ensure the proper included items were checked off in section 3 of the tenancy agreement.

A.N. confirmed that the Tenant had his cable included in his rent from January 1, 2008 to September 2016. A.N. stated that the Landlord stopped providing cable to all tenants in 2016 because the owner felt it was a too costly option for the owner at the time. A.N. stated that the Landlord gave notice to the tenants and a rent reduction to those tenants that had cable checked off on their lease.

A.N. queried why the Tenant waited four years to bring up this issue and did not raise this in 2016 when the cable was first cut off. A.N. also stated that the Tenant did not raise this until he was in arrears of his rental payments in 2020.

The Property Manager, M.P., also testified as follows. He stated that when they cut cable, the owner reduced rent by $50.00, as that was the price of basic cable in 2016. He stated that every tenant who had cable included and was checked off on their tenancy agreement was credited $50.00.

In reply the Tenant stated that he brought the issue of cable to the Landlord numerous times. In support he provided two letters in evidence, one dated January 5, 2017, and one January 23, 2017 wherein the Tenant raised the issue of his cable being cut off. The Tenant testified that he had email communications discussing the matter with the Landlord.

The Tenant acknowledged that he did not bring an application to the Residential Tenancy Branch sooner. He provided in evidence copies of the birth certificates for his two children and noted that he has had two pregnancies and two babies since 2016. He again noted that he brought it to their attention in January only a few months after.

Analysis

The Tenant seeks an Order canceling the Notice pursuant to section 46 of the *Act.*

The Tenant argues that he paid the September and October rent within 2 days of receipt of the Notice thereby canceling the Notice. The outstanding amount on the Notice included amounts payable pursuant to an invalid repayment plan.

For a period of time in 2020, a landlord was prohibited from issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46 of the *Act* as a result of the Covid 19 pandemic and Provincial State of Emergency. On August 14, 2020, the COVID-19 (*Residential Tenancy Act* and *Manufactured Home Park Tenancy Act*) (No. 2) *Regulation* came into force. Pursuant to this *Regulation*, a landlord was required to issue a Repayment Plan to a tenant for any unpaid rent ("affected rent") during the "specified period" of March 18 to August 17, 2020. In the event the tenant failed to pay the installments as set out in the repayment plan, the landlord could issue a 10 Day Notice. For clarity I reproduce section 4 of the *Regulation* as follows:

> **Terms of repayment plan**
>
> **4 (1)** The following are terms of each repayment plan:
>
> (a) the repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021;
>
> (b) the payment of the overdue rent must be in equal instalments;
>
> (c) each instalment must be paid on the same date that rent is due under the tenancy agreement;
>
> (d) the date the first instalment must be paid must be at least 30 days after the date the repayment plan is given by the landlord to the tenant.
>
> (2) A repayment plan must be in writing and include all of the following:
>
> (a) the date the repayment period starts as determined under subsection (1) (a);
>
> (b) the total amount of the affected rent that is overdue;
>
> (c) the date on which each instalment must be paid;
>
> (d) the amount that must be paid in each instalment.
>
> (3) If a repayment plan given by the landlord to the tenant under section 3 (2), (3) or (4)
>
> (a) does not comply with a requirement set out in subsection (1) of this section,
>
> (b) does not include the information described in subsection (2), or

(c) includes information that is inaccurate or incomplete, the landlord must give the tenant another repayment plan that complies with this section and includes accurate and complete information.

(4) If a repayment plan given by the tenant to the landlord under section 3 (5)

(a) does not comply with a requirement set out in subsection (1) of this section,

(b) does not include the information described in subsection (2), or

(c) includes information that is inaccurate or incomplete,

the tenant must give the landlord another repayment plan that complies with this section and includes accurate and complete information.

(5) A prior agreement is not cancelled under section 3 (4) or (5) unless the repayment plan complies with this section and includes accurate and complete information.

While the Repayment Plan was not initially provided by either party, both parties uploaded a copy during the hearing. I have reviewed the Repayment Plan in making this my Decision. The document confirms the Landlord issued a Repayment Plan to the Tenant on August 26, 2020. The Repayment Play complied with section 4(1)(d) of the *Regulation,* in that the first payment was due on October 1, 2020. However, the terms of the Repayment Plan provided that the Tenant was to pay all affected rent by *February 1, 2021* in five equal installments of $1,548.00. As noted above, section 4(1)(a) of the *Regulation* provides that the repayment plan is to end on July 10, 2021. The purpose of this section is to provide tenants with a reasonable amount of time in which to repay rental arrears which accumulated between March 18 to August 17, 2020. The Repayment Plan issued by the Landlord in this case does not comply with the *Regulation* as the repayment plan does not end on July 10, 2021. The evidence confirms the Tenant informed the Landlord that the Repayment Plan was invalid and the Landlord failed to issued a corrected Repayment Plan. As the Landlord's Repayment Plan does not comply, the Landlord was not able to include the affected rent on the 10 Day Notice for Unpaid Rent or Utilities.

The evidence confirms the sum of $3,472.00 was included on the Notice. This sum relates to the Tenant's September and October rent, which is outside the Specified Period and therefore not covered by the aforementioned *Regulation.* The Tenant testified that the Landlord failed to withdraw the $1,736.00 September rent and the $1,736.00 October rent from his account pursuant to a preauthorized automatic withdrawal. Documentary evidence supports the Tenant's testimony in this respect. The Landlord is reminded that the Landlord may not refuse rental payments.

The parties agreed the Tenant paid this sum within two days of receipt of the Notice. Accordingly, and pursuant to section 46(4) I find the Notice should be cancelled as the Tenant paid the September and October rent within five days of receipt of the Notice. **I therefore grant the Tenant's request that I cancel the Notice. The tenancy shall continue until ended in accordance with the *Act.***

I will now address the Tenant's request for a retroactive and ongoing rent reduction pursuant to section 65(1)(b) of the *Act* which reads as follows

> **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:
>
> …
>
> (b)that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;
>
> …

There was no dispute that from January 1, 2018 to September 2016 the Tenant enjoyed cable as an included service. Cable was not specifically included in this tenancy agreement. However, as noted by the Tenant, section 3 of the agreement was left blank and 8 other included items were not checked off.

The Landlord's representatives confirmed the owner wished to reduce costs and cancelled cable for the tenants in September of 2016. Those tenants who had cable specifically included in their tenancy agreement were credited $50.00 per month for loss of this service. As the subject tenancy agreement did not specifically include cable this Tenant was not offered similar compensation. The Landlord's representatives submitted the Tenant should have taken steps to ensure his tenancy agreement was accurate.

When interpreting contracts, such as residential tenancy agreements, the following guidance can be found in G.H.L. Fridman, "The Law of Contract in Canada" (Carswell, Thomson Canada Limited, 1994), pages 466-474:

- Where there is no ambiguity in a written contract it must be given its literal meaning .
- In accordance with what is sometimes referred to as the "golden rule", words must be given their plain, ordinary meaning, at least unless to do so would result in an absurdity.

- If there are two possible interpretations, one of which is absurd or unjust, the other of which rational, the latter must be taken as the correct one, on this basis of giving effect to the general contractual intentions of the parties.
- The contract should be construed as a whole, giving effect to everything in it, if at all possible.
- No word should be superfluous.
- If a single transaction is carried into effect by several documents, the whole is treated as one document and they must all be read together for the purpose of ascertaining the intention of the parties.
- Where the contract is ambiguous, the application of the c*ontra proferentem* rule ensures that the meaning least favourable to the author of the document prevails. In other words, where there is ambiguity in a contract the contract should be interpreted in favour of the party who did not draft the contract.
- A court is entitled to concluded that everything that was agreed between the parties is not contained in the written document or documents that make up the contract, and that it is possible, and justifiable to import or imply into the contract some additional term or terms, in order to establish the nature an scope of the contractual obligations binding the respective parties.

In this case, although the tenancy agreement did not specifically provide that cable was included in the payment of rent, I find this was an inadvertent omission. As noted, section three of the tenancy agreement was silent in terms of included items and services. This created an ambiguity, which should be interpreted in favour of the Tenant pursuant to the *Contra proferentem* legal principle which provides that where there is ambiguity in a contract the contract should be interpreted in favour of the party who did not draft the contract. In this case, the Landlord drafted the residential tenancy agreement (contract) and as such an ambiguity should be interpreted in favour of the Tenant. The Tenant aptly noted that he enjoyed numerous included items and services which were also not checked off on section three. I find this was an oversight by the Landlord's representatives when completing the tenancy agreement. I find it likely that the parties would have included cable in section three (as well as the other items and services enumerated by the Tenant) had this omission been brought to their attention at the time of signing the agreement.

I find that it was an implied term of this tenancy agreement that the Tenant would have cable included in his rent payment. The evidence confirms that for the first eight years of the tenancy the Tenant enjoyed cable as an included utility in his rent payments. While it is preferable that all tenancy agreements be in writing and comprehensively deal with all matters relating to the tenancy, this is not always the case. Section 1 of the

Residential Tenancy Act specifically provides that tenancy agreements can be both written or oral such that a tenancy can exist even without a written agreement.

In British Columbia, certain terms are a part of every tenancy agreement whether written or oral. The *Residential Tenancy Act,* specifically provides that all tenancy agreements include the *standard terms*. This is set forth in section 13 of the *Residential Tenancy Act* deals with the preparation of tenancy agreements and reads as follows:

13 (1)A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2)A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(a)the standard terms;

(b)the correct legal names of the landlord and tenant;

(c)the address of the rental unit;
(d)the date the tenancy agreement is entered into;

(e)the address for service and telephone number of the landlord or the landlord's agent;

(f)the agreed terms in respect of the following:

(i)the date on which the tenancy starts;

(ii)if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;

(iii)if the tenancy is a fixed term tenancy, the date on which the term ends;

(iii.1)if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;

(iv)the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;

(v)the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

(vi)which services and facilities are included in the rent;

> (vii)the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.
>
> (3)Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

The *standard terms* referenced in 13(2)(a) refer to the standard terms as set out in the Schedule to the *Regulations.* Dealing only with the provision of utilities, section 5(2) of the *Schedule* to the *Regulations* provides as follows:

> (2)The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under section 27 (2) of the Act.

Fridman continues at page 486 to describe the three possible bases for the implication of implied terms other than where this is mandatory under a statute:

- the first is that the intention of the parties is clear from the contract and its surrounding circumstances; they would have included such a term had they forseen its necessity or it had been drawn to their attention.
- the second is that to import such a term is required in order to give effect to what has been called “the reasonable expectations of the parties”; and,
- the third is that the implication of such a term is needed to give purpose and effect to the rest of the contract.

Applying the above to the case before me I find that it was clear the parties intended to include cable in the payment of rent in section three of the tenancy agreement and would have included the term had the omission been drawn to their attention. Further, as the Tenant enjoyed free cable for over eight years, I find it was the reasonable expectation of the parties that cable was included.

Following from this, I find that at the time the Landlord discontinued this service, the Tenant should have been offered similar compensation to those tenants who received a $50.00 rent reduction.

The Tenant provided evidence of a conversation with the cable provider in January of 2017. The representative confirmed that at that time cable was $85.12 monthly. It is unclear if the Landlord paid this sum for each unit, or if the Landlord received a discounted package.

This is not a case where the Tenant sat idly by and did nothing until filing this application. Rather, the Tenant brought this to the Landlord's attention in January of 2017, as evidenced by the letters provided in evidence. While the Tenant did not make a formal application, I am not persuaded that he should be *estopped* from brining his claim. At no time did the Tenant communicate that he consented to the cancelation of this service and in fact informed the Landlord immediately that he was displeased.

I accept the Landlord's evidence that at the time the cable service was discontinued many of the tenants received a $50.00 reduction in their rent as compensation for loss of this service. While it is possible cable charges may have been less, or more at the time, and may have fluctuated in the future, this figure appears to have been accepted by the other tenants. On this basis, I find the Tenant is similarly entitled to this compensation at $50.00 per month.

I therefore Order that the Tenant is to be credited the sum of $2,650.00 representing $50.00 per month for the 53 months from September 2016 to January 2021. This sum shall be credited to the Tenant in any calculation of arrears during the Specified Period and should be considered when the Landlord issues a corrected Repayment Plan.

Further, I Order that the Tenant's monthly rent shall also be reduced to $1,686.00 commencing February 2021.

As the Tenant has been successful in his Application ,he is entitled to recover the $100.00 filing fee. Pursuant to section 72(2)(a) of the *Act* I authorize the Tenant to reduce his February 2021 rent by a further $100.00 as compensation for the filing fee.

Conclusion

The Tenant's request to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Act.*

The Tenant's request for a rent reduction pursuant to section 65(1)(b) is granted. The Tenant is to be credited $2,650.00 representing $50.00 per month from September 2016 to January 2021 for loss of cable services. This amount shall be credited to the Tenant in any calculation of rental arrears during the specified period.

Commencing February 1, 2021 the Tenant's rent shall be reduced to $1,686.00, which is $50.00 less than the current $1,736.00 rental amount as recognition for the loss of cable services.

The Tenant is entitled to recover the $100.00 filing fee. He may reduce his February 2021 rent by a further $100.00 as compensation for this sum.

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: January 15, 2021

Residential Tenancy Branch