



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, RR, MNDCT, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:11 A.M. to enable the landlord to call into this teleconference hearing scheduled for 11:00 A.M. The landlord did not attend the hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness JC also attended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, her witness and I were the only ones who had called into this teleconference.

At the outset of the hearing the tenant affirmed she understands it is prohibited to record this hearing.

The landlord submitted into evidence a proof of service signed and stamped by the landlord on January 15, 2021. It states: "This will confirm that [landlord] was served in person and receive the Notice of Dispute with evidence attached on Jan 15, 2021. Delivered by [tenant]".

I accept the tenant's testimony and proof of service that the landlord was served with the application and evidence (the materials) in person on January 15, 2021, in accordance with section 89(1)(a) of the Act.

I accept the tenant's testimony that the landlord was served with a second evidence package on March 25, 2021 by leaving a copy in the landlord's mailbox, in accordance with section 88(f) of the Act. The landlord is deemed to have received the second evidence package on March 28, 2021, in accordance with section 90 (d) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

#### Preliminary Issue – Partial Withdrawal of the Application

The tenant advised that she is not seeking for an order for the landlord to comply with the Act

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the tenant's application to withdraw her claim for an order for the landlord to comply with the Act.

#### Issues to be Decided

Is the tenant entitled to:

1. an order to reduce the rent for repairs, services or facilities agreed upon but not provided?
2. a monetary award for compensation for damage or loss?
3. an authorization to recover the filing fee for this application?

#### Background and Evidence

While I have considered the documentary evidence and the testimony of the attending party, not all details of the tenant's submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained Rule of Procedure 7.4 to the attending party; it is the tenant's obligation to present the evidence to substantiate the application.

The tenant affirmed the periodic tenancy started on July 15, 2015. Monthly rent is \$1,120.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$512.50 and a pet damage deposit of \$512.50 were collected and the landlord holds them in trust.

The tenant testified the tenancy agreement contains a clause stating that rent includes cable service. The tenant did not submit the tenancy agreement into evidence.

On August 03, 2020 the tenant noticed the cable service in her rental unit was discontinued. The tenant immediately hired the exact same cable service that was paid by the landlord and has been paying \$101.86 per month. The tenant submitted into evidence five invoices dated after August 03, 2020 indicating a monthly charge of \$90.00 for the cable service. The tenant continued to pay monthly rent in the amount of \$1,120.00.

Later in August 2020 the tenant received a letter from the landlord dated July 30, 2020: "Any tenants who had cable included in their lease will have their rent reduced retroactively to August 1, 2020. We will update affected tenants in the coming weeks with more information".

The tenant also received a letter from the cable provider in late August 2020: "Currently, [cable provider] is providing your suite with our TV services under a Bulk agreement with your landlord / building. Effective July 31<sup>st</sup> 2020, [cable provider] will need to interact with all residents individually for your TV services."

The tenant contacted the landlord in writing in August and September 2020 inquiring about the rent reduction. On December 4, 2020 the tenant left a letter in the landlord's mail slot. The letter states:

I am writing this letter regarding the situation with the cable. I arrived home on a day in early August to find my cable was not working only to find out when I called [cable provider] that the landlord had not renewed their contract. I was forced to have to sign up for a contract for a year with [cable company] to get the same channels at a cost of 101.86. I received a letter shortly after that from [Landlord] advising that the rent would be reduced in the coming weeks and [Landlord] would be in touch. Its now 4 months later and 5 billing periods later and I have received nothing from [Landlord] regarding this rent reduction. [...] I think I have been patient enough and at this point if I don't have a piece of paper signed and dated by the landlord confirming the rent reduction of 101.86 back to August 1 in my possession by December 30, 2020, I will have no choice but to take it to the next level.

Witness JC testified he observed the tenant leaving the December 04, 2020 letter in the landlord's mail slot. JC stated the landlord discontinued the cable service in August 2020.

On January 04, 2021 the tenant called the landlord to inquire about the cable service, but her call was not answered and the voicemail was not returned. The tenant did not receive a notice of termination of service (RTB from 24) from the landlord.

The tenant affirmed the landlord contacted her on or about January 25, 2021 offering a \$50.00 rent reduction retroactive to August 2020. The landlord refused to provide written confirmation of the rent reduction and asked the tenant to withdraw this application.

The tenant is claiming for a permanent rent reduction in the amount of \$101.86 retroactive to August 2020. The tenant is also claiming compensation in the amount of \$50.00 per month since August 2020 because the landlord did not serve the notice of termination of service and ignored the tenant's multiple requests to reduce rent due to the termination of the cable service.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

### Rent Reduction

Section 65(1) of the Act states:

(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;

[...]

(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;**

(emphasis added)

Residential Tenancy Branch Policy Guideline 22 states an arbitrator may order that past or future rent be reduced :

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.

The tenant claims she suffered a reduction in her tenancy in the amount of \$101.86 because the landlord discontinued the cable service.

Section 13(2) of the Act states that all residential tenancy agreements in British Columbia should include the standard terms:

- (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;

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

Based on the tenant's undisputed testimony, the July 30 and December 04, 2020 letters, the cable provider letter and the five invoices, I find that the landlord was responsible for providing cable service, as of August 03, 2020 the landlord discontinued the cable service and the tenant has been paying \$100.80 (\$90.00 plus 12% taxes) per month for the same service.

Section 27 of the Act addresses the landlord's ability to terminate or restrict services of facilities:

- (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.

Residential Tenancy Branch Policy Guideline 01 states:

1. A landlord must continue to provide a service or facility that is essential to the

tenant's use of the rental unit as living accommodation.

2. If the tenant can purchase a reasonable substitute for the service or facility, a landlord may terminate or restrict a service or facility by giving 30 days' written notice, in the approved form, of the termination or restriction. The landlord must reduce 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.

Based on the tenant's undisputed testimony, the July 30 and December 04, 2020 letters, the cable provider letter and the five invoices, I find the landlord breached the tenancy agreement and section 27(2) of the Act by terminating the cable service and not reducing rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination of the service. I further find the tenant has been incurring a monthly expense of \$100.80 since August 03, 2020 to have access to the same service. As such, the tenant is entitled to compensation for the termination of cable service in the monthly amount of \$100.80.

Since the tenant has been incurring a monthly expense for the service ended on August 03, 2020, pursuant to Section 65(1)(b) of the Act, I grant the tenant a prorated reduction for August 2020 in the amount of \$94.08 ( $100.8 / 30 = 3.36 \times 28$ ) and for the months of September, October, November, December 2020, January, February, March and April 2021 in the amount of \$100.80 per month.

Pursuant to section 65(1)(f) of the Act, commencing on May 01, 2021 the tenant's rent shall be reduced to \$1,019.20 (\$1,120.00 - \$100.80) as compensation for the loss of cable services.

#### Compensation for failure to serve notice of termination of service

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Based on the tenant's testimony, I find the tenant failed to prove, on a balance of probabilities, that the suffered a loss or damage, other than the cable service amount, due to the landlord's non-compliance with section 27(2)(a) of the Act.

The tenant is not entitled to the compensation claimed.

#### Filing fee and summary

As the tenant was partially successful with her application, I authorize her to recover the \$100.00 filing fee.

In summary, the tenant is entitled to:

Item	Amount \$
August 2020 rent reduction	94.08
September 2020 to April 2021 rent reduction – 100.80 per month x 8 months	806.40
Filing fee	100.00
<b>Total</b>	<b>1,000.48</b>

#### Conclusion

Pursuant to section 65(1)(b) of the Act, I authorize the tenant to deduct the amount of \$1,000.48 from a future rent payment.

Pursuant to section 65(1)(f) of the Act, commencing on May 01, 2021 the tenant's rent shall be reduced to \$1,019.20 as compensation for the loss of cable service.

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 26, 2021

---

Residential Tenancy Branch