22. Termination or Restriction of a Service or Facility

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

In a tenancy agreement, a landlord may provide or agree to provide services or facilities in addition to the premises which are rented. For example, an intercom entry system or shared laundry facilities may be provided as part of the tenancy agreement. A definition of services and facilities is included in the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* [1] (the Legislation).

A landlord must not:

- terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- terminate or restrict a service or facility if providing the service or facility is a material term of the tenancy agreement.[2]

A landlord may restrict or stop providing a service or facility other than one referred to above, if the landlord:

- gives the tenant 30 days written notice in the approved form, and
- reduces the rent to compensate the tenant for loss of the service or facility.

Where the tenant claims that the landlord has reduced or denied him or her 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.

An "essential" service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is "essential" to the tenant's use of the rental unit as living accommodation or use of the manufactured home site as a site for a manufactured home, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the

1 *Residential Tenancy Act,* s. 1; *Manufactured Home Park Tenancy Act,* s. 1

tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

Even if a service or facility is not essential to the tenant's use of the rental unit as living accommodation, provision of that service or facility may be a material term of the tenancy agreement. A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the tenancy agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Additional information about material terms is included in Guideline #8.

In determining whether a service or facility is essential, or whether provision of that service or facility is a material term of a tenancy agreement, an arbitrator will also consider whether the tenant can obtain a reasonable substitute for that service or facility. For example, if the landlord has been providing basic cablevision as part of a tenancy agreement, it may not be considered essential, and the landlord may not have breached a material term of the agreement, if the tenant can obtain a comparable service.

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 damages as a result of the negligence, an arbitrator may find there has been both a breach of contract and a failure to take reasonable care which resulted in the damages suffered by the tenant and make an award for damages and/or breach of contract.