

22. Termination or Restriction of a Service or Facility

December 2016

This Policy Guideline is intended 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.

This Policy Guideline deals with termination or restriction of a service or facility that is provided by the landlord under a tenancy agreement.

A. LEGISLATIVE FRAMEWORK

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 Section 1 of the *Residential Tenancy Act* (RTA) and the *Manufactured Home Park Tenancy Act* (MHPTA).

Under section 27 of the RTA and section 21 of the MHPTA 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;
- providing the service or facility is a material term of the tenancy agreement.

A landlord may restrict or terminate 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.

B. ESSENTIAL OR PROVIDED AS A MATERIAL TERM

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 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.

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. 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. When considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement. It is entirely possible that the same term may be material in one agreement and not material in another.

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- See also *Policy Guideline 8: Unconscionable and Material Terms*

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.

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.



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E. GUEST USE OF COMMON AREAS

Under section 9 (2.1) of the Residential Tenancy Regulation, a landlord may restrict guest use of common areas of a rental property. A restriction of guest use of a common area that is not defined as a facility in section 1 of the Act is not subject to section 27 of the Act, and no notice or rent reduction is required.

F. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
Document	am	Added section numbers	05-Dec-2016
A-D	am	Amended for clarity	05-Dec-2016
E	new	Addresses regulatory amendment	05-Dec-2016

Change notations

am = text amended or changed

del = text deleted

new = new section added