



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC; FF

Introduction

This is the Tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

Both parties provided affirmed testimony at the Hearing.

I was determined that the Tenant served the Landlord with the Notice of Hearing documents by personal service on October 24, 2013. It was also determined that the Tenant served the Landlord with his documentary evidence on January 27, 2014.

It was determined that the Landlord mailed the Tenant copies of her documentary evidence, by registered mail, on January 23, 2014.

Issues to be Decided

- Is the Tenant entitled to compensation for overpayment of utilities during the term of the tenancy?

Background and Evidence

This tenancy started on May 1, 2011 and ended on February 28, 2013. Rent was \$1,850.00, due on the first day of each month. Rent did not include utilities.

The rental property contains two suites. At the beginning of the tenancy the Tenant, his wife, and his mother lived in the main suite (suite "A"). In September of 2011, the Tenant's mother moved into the smaller suite (suite "B"). There were two separate tenancy agreements. Rent for suite "B" was \$650.00 per month. Utilities were not included in rent for suite "B" either. There is no separate meter for each of the two suites.

There was a previous hearing with respect to this rental property on September 6, 2013. The Landlord had applied for a monetary award for unpaid rent, unpaid utilities, cleaning, repairs and garbage removal at the end of the tenancy. The Landlord was awarded \$3,700.00 for unpaid rent, \$423.74 for unpaid utilities, and a portion of the

filing fee. The remainder of the Landlord's claim was dismissed. The security deposit of \$900.00 was set off against the Landlord's monetary award.

On September 9, 2013, the Landlord and the Tenant's mother attended another hearing. This hearing was for the Landlord's application for unpaid rent, unpaid utilities (25% of the total utility bill), cleaning and garbage renewal with respect to suite "B". The Landlord was awarded \$650.00 for unpaid rent, \$165.00 for cleaning and garbage removal, and recovery of the filing fee. The arbitrator found that there was insufficient evidence that the Tenant's mother was required to pay 25% of the utilities and that portion of the Landlord's claim was dismissed.

The Tenant gave the following testimony:

The Tenant testified that between May to September, 2011, there was another occupant in suite "B". The Tenant paid full utilities for both suites.

The Tenant testified that the electric heat was faulty and that it cost \$700.00 for 2 months of hydro. The Tenant submitted that it was unconscionable to expect him to pay utilities for both suites. The Tenant seeks recovery of the total amount of utilities that he paid over the course of the tenancy, in the amount of \$5,390.72. The Tenant provided copies of hydro bills and a printout from the municipality for water and sewer.

The Landlord gave the following testimony:

The Landlord testified that the person who occupied suite "B" prior to the Tenant's mother moved out at the end of May, 2011. She stated that suite "B" was vacant from the end of May until September 1, 2011, when the Tenant's mother moved in so there were minimal additional utility charges incurred by the Tenant. The Landlord submitted that the Tenant was compensated by reducing the rent to \$1,800.00 for the month of May, 2011, and reducing the security deposit by \$25.00. The Landlord submitted that this was effectively a "credit" of \$75.00 and that therefore the Tenant has already been sufficiently compensated.

The Landlord stated that the square footage of suite "B" was approximately $\frac{1}{4}$ of the size of suite "A", and therefore she expected that the Tenant and his mother would apportion the utilities accordingly. The Landlord testified that it was a term of the tenancy agreement that the occupant of suite "A" must pay utilities for both suites.

The Tenant gave the following reply:

The Tenant submitted that the other occupant vacated suite "B" on June 19, 2011.

Analysis

I explained to the parties that in the event that a rental property has only one meter, the landlords would be wise to have the utilities in their name. The tenancy agreement could stipulate that the occupants pay a certain share of the utilities, and the landlords could provide the occupants with a copy of utility bills for payment. If the occupants did not pay their share of the utilities within 30 days of receipt of the utility bill, then the landlord could issue a 10 Day Notice to End Tenancy.

A term of a tenancy agreement is unconscionable if it is oppressive or grossly unfair to one party. If a term is found to be unconscionable, it cannot be enforced. I find that it is unconscionable to expect one tenant to pay for another tenant's utilities. The fact that in this case the other tenant is the Tenant's mother is irrelevant. There are two separate tenancy agreements.

Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order a party to pay that compensation to another party.

This is the Tenant's claim and therefore the Tenant has the burden of proof to establish his claim on the civil standard, the balance of probabilities. In this case, this includes proof of the actual cost of the utilities over the term of the tenancy.

I find that the Tenant is entitled to recover a portion of the utilities that he paid over the term of the tenancy and I fix that amount at **25% of the amount that he has demonstrated that he paid over the term of the tenancy**, as substantiated in the evidence provided by the Tenant:

Hydro bills paid:	\$61.23
	\$100.00
	\$157.90
	\$145.83
	\$256.75
	\$150.00
	\$218.00
	\$328.00
	\$335.64
	\$150.00
	\$200.00
	\$223.00
	\$175.00
	<u>\$308.00</u>

Total Hydro bills		\$2,809.35
Water and Sewer bills paid:	\$300.50	
	\$264.81	
	\$253.55	
	\$291.65	
	<u>\$211.00</u>	
Total Water and Sewer		<u>\$1,121.51</u>
		\$3,930.86
\$3,930.86 x 25% = \$982.72		

The Tenant has been partially successful in his application and I find that he is entitled to recover a portion of the filing fee from the Landlord, in the amount of **\$50.00**.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$1,032.72** for service upon the Landlord. This Monetary Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that court.

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: March 3, 2014

Residential Tenancy Branch

