



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Swedish Canadian Manor and Mendel Property Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RR

Introduction

This hearing was convened to address a claim by the tenant for a monetary order, an order authorizing him to reduce his rent and an order compelling the landlord to comply with the tenancy agreement. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Should the tenant be permitted to reduce his rent?

Is the landlord complying with the tenancy agreement and if not, should they be ordered to comply?

Background and Evidence

The facts are not in dispute. The tenancy began on February 1, 2014. The tenant pays \$447.00 per month in rent and the tenancy agreement states that heat is included in the rent but electricity is not. The tenant has set up an account with BC Hydro to provide electricity to the rental unit.

In September 2014, the tenant hired an electrician to inspect the breaker box in the rental unit and discovered that the electric heater in the unit was wired through the tenant's meter, which meant that he was paying for heat. The landlord's agent agreed that the tenant was paying for electric heat and explained that all of the tenancy agreements in the building were written in the same way, including electric heat in the rent yet requiring tenants to pay for electricity.

The tenant provided a print out from BC Hydro showing that for the period from August 23 – September 24, a 33 day period in which the tenant did not turn on the electric heat, his bill was \$17.00. The tenant argued that he should pay no more than \$17.00 per month for his electrical usage as that would accurately represent his usage without heat. He further provided 2 hydro bills showing that for the period from February 1-24 he was billed \$54.54 and from February 25-March 31 he was billed \$55.63.

The tenant seeks a monetary order for \$54.40 to compensate him for electricity used for heating thus far in the tenancy as well as an order that he be permitted to reduce his rent by \$10.00 per month which he believes will average out over the year to compensate him for the money he pays for heat.

Analysis

I find that the tenancy agreement is unclear with respect to whether the tenant or the landlord is required to pay for heating costs. The contractual doctrine of *contra proferentem* is a principle whereby when a contract's terms are ambiguous, the interpretation is resolved in favour of the party who did not draft the contract. The landlord is the party that drafted the tenancy agreement and had the obligation to ensure that the terms therein clearly communicated the obligations of the parties. Applying the doctrine of *contra proferentem* leads me to find that the ambiguous term must be interpreted in a manner that favours the tenant. I therefore find that the landlord is obligated to pay for heating costs. Because the rental unit is wired in such a way that the electric heater is charged through the tenant's hydro meter, I find that the landlord must repay the tenant the amount he must pay to BC Hydro for the cost of heating.

The tenant is required to prove the amount which he is paying for heat. The tenant has provided just 2 bills and a record of consumption for a period in which he was not using heat and has also testified that he spent more than a month away from the rental unit which would also affect his average heating costs. I am not satisfied on such scant evidence that his typical heating bill would be just \$17.00 per month. However, I find that it would be at least half of the \$55.00 hydro bills the tenant was paying in February and March. I find that for approximately 5 months of the year the tenant will not be using heat or will be using minimal heat which will bring his hydro bill under \$25.00 and that for the remaining 7 months of the year when he is using heat, his bill will likely be over \$40.00. The tenant has claimed a rent reduction of \$10.00 per month to account for this difference and I find this claim to be more than reasonable as it will average out over the course of the year so the landlord is effectively paying for heating costs. I therefore order that the tenant's rent be reduced by \$10.00 per month beginning

January 1, 2015. I find that this rental reduction will have the effect of bringing the landlord into compliance with the tenancy agreement.

I find that the tenant has overpaid hydro costs during the tenancy and while I find his calculations to be inexact, I find that if anything, he has underestimated the amount of overpayment. I therefore find that the tenant is entitled to recover \$54.40 and I order that this amount be deducted from a future rental payment, which means that in the month the deduction takes place, the tenant will withhold \$64.40 from his rent to total the \$54.40 in compensation for past payment of heating costs and the permanent \$10.00 rent reduction to account for future heating costs.

Conclusion

The tenant's rent will be reduced by \$10.00 per month beginning in January 2015 and the tenant may also deduct \$54.40 from a future rental payment to compensate him for past payment of heating costs.

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: December 05, 2014

Residential Tenancy Branch

