



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC; OLC;

Introduction

This is the Tenants' application for compensation for damage or loss under the Act, Regulation or tenancy agreement and an Order that the Landlords comply with the Act, Regulation or tenancy agreement.

The parties gave affirmed testimony at the Hearing.

It was determined that the Notice of Hearing documents and copies of the Tenants' documentary evidence were mailed to the Landlords, by registered mail, sent May 15, 2015. It was also determined that the Landlords served the Tenants with copies of their documentary evidence.

Issues to be Decided

- Are the Tenants entitled to compensation for overpayment of utilities?
- Should the Landlords be ordered to comply with the Act, regulation or tenancy agreement with respect to payment of utilities?

Background and Evidence

The parties agreed that this tenancy began on March 1, 2013. Monthly rent is \$1,150.00 due on the first day of each month. Rent does not include utilities. The Tenants paid a security deposit in the amount of \$550.00.

The rental property is a house with two suites. The Tenants and their two children occupy the upper suite. The lower suite is occupied by another tenant (the "Other Occupant"). Electricity and gas bills for the entire rental property are in the Tenants' names. The water bill is in the Landlords' names, but the Tenants are required to pay the full amount of the water bill.

Rent for the Other Occupant includes utilities. The Tenants are required to pay the entire cost of utilities for the entire rental property.

Tenants' evidence:

The Tenants testified that at the time they negotiated the tenancy agreement, the Landlord advised them that he rents the upstairs suite for \$50.00 less than the market value and the lower suite for \$50.00 more than the market value, in order to make up the difference in utility costs.

The Tenants stated that the cost of the Other Occupant's share of utilities exceed the amount of \$50.00 a month that they are compensated for in their lower rent. They calculate that the Other Occupant's share of utilities amounts to 40% of the total utilities. They stated that that the Other Occupant has electric baseboard heating which the Tenants cannot control and the electricity bill in the winter months is very high.

The Tenants provided copies of utility bills and statements in evidence. They calculate that, between March 1, 2013, and March 1, 2014, they paid the following for utilities:

Gas	\$1,500.15
Electricity	\$2,628.50
Water	<u>\$365.37</u>
TOTAL	\$4,494.02

The Tenants seek a monetary award in the amount of \$1,797.61 to compensate them for the cost of the Other Occupant's utilities. They also seek an Order that the Landlords split future utility costs fairly between the Tenants and the Other Occupant.

Landlords' evidence:

The Landlord DE acknowledged that he told the Tenants that their rent would be less than market value to compensate for paying the total utilities, but denied telling the Tenants that they were paying \$50.00 less than market value and the Other Occupant was paying \$50.00 more. He stated that he has recently investigated similar properties to the rental unit and that the Tenants are paying somewhere between \$300.00 and \$500.00 below market rent. The Landlords provided copies of advertisements in evidence, which they submit are similar to the rental property.

DE stated that utility bills for everybody have sky rocketed in the last 2 years. He submitted that this is the "root of the problem". DE submitted that the Other Occupant is very responsible regarding his use of electricity and water; is often away; and that the Tenants would have to pay for the utilities in any event, even if the lower suite was vacant.

The Landlord testified that the lower suite is approximately 600 square feet with one bedroom and the Tenant's rental unit is approximately 1200 square feet. He stated that they share some common areas as well.

Analysis

This is the Tenants' Application for Dispute Resolution. The Landlords have not filed an application for an additional rent increase. I do not find that the Landlords' evidence with respect to the market value for the rental unit is relevant to the Tenant's Application for Dispute Resolution.

Residential Tenancy Policy Guideline #1 provides, in part:

“SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.
2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

The Regulations define “unconscionable”, as follows:

Definition of "unconscionable

- 3** For the purposes of section 6 (3) (b) of the Act [*unenforceable term*], a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

Section 6(3)(b) of the Act provides that a term of a tenancy agreement is not enforceable if the term is unconscionable.

I find that the term of the tenancy agreement with respect to payment of utilities is unconscionable and therefore unenforceable. I find that it is unfair to expect the Tenants to pay for the Other Occupant's utilities. The Tenants have no control over the amount of utilities used by the Other Occupant. The Other Occupant may end the tenancy while the Tenants are still there, and a new occupant of the downstairs suite may use considerably more utilities than the Other Occupant.

I find that, currently based on the number of occupants and the square footage of each suite, a fair distribution of the utilities would be 70% for the Tenants and 30% for the Other Occupant.

I Order that the Landlords put all of the utilities for the rental property in their names as quickly as possible, but in any event by August 15, 2015.

Pursuant to the provisions of Section 67 of the Act, I award the Tenants compensation for overpayment of utilities from March 1, 2013, to and including March 1, 2015, calculated as follows:

Approximate utilities paid	\$4,000.00
Other Occupant's share	<u>x30%</u>
TOTAL	\$1,200.00

I Order that the Tenants provide the Landlord with copies of the utility bills that are in the Tenants' names so that the parties can calculate the Other Occupant's portion of those bills from March 1, 2015 up to and including the date that the utilities are placed in the Landlords' names. Of course, there will be a calculation with respect to the water bill as well, and the Tenants will be responsible for paying 70% of the water bills from March 1, 2015.

Conclusion

I Order that the Landlords put all of the utilities for the rental property in their names as quickly as possible, but in any event by **August 15, 2015**.

I Order that the Tenants provide the Landlord with copies of the utility bills that are in the Tenants' names so that the parties can calculate the Other Occupant's portion of those bills from March 1, 2015 up to and including the date that the utilities are placed in the Landlords' names. Of course, there will be a calculation with respect to the water bill as well, and the Tenants will be responsible for paying 70% of the water bills from March 1, 2015.

The Tenants are awarded compensation in the amount of **\$1,200.00** for overpayment of utilities for the period between March 1, 2013 and March 1, 2015. Further to the provisions of Section 72 of the Act, the Tenants may **either** deduct this amount from future rent due to the Landlords, **or** may serve the Landlords with the enclosed Monetary Order, which may be enforced through the Provincial Court of British Columbia (Small Claims).

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: July 17, 2015

Residential Tenancy Branch

