



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on July 31, 2015 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents.

On December 19, 2015 the Tenant submitted twenty pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was mailed to the Landlord on December 23, 2015. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On January 07, 2015 the Landlord submitted 54 pages of evidence to the Residential Tenancy Branch. The Landlord stated that some of this evidence was served to the Tenant when the Application for Dispute Resolution was served on July 31, 2015. The Tenant acknowledged receiving evidence from the Landlord when he received the Application for Dispute Resolution.

Section 3.7 of the Residential Tenancy Branch Rules of Procedure require parties to provide the Residential Tenancy Branch and the other party with an identical package of documents that they wish to be considered as evidence. In these circumstances the Landlord's entire evidence package was not accepted as evidence as he did not provide the Residential Tenancy Branch and the Tenant with an identical evidence package, which made it difficult to ascertain exactly which documents had been served to the Tenant.

The Landlord was advised that if he wished to introduce a document as evidence he must refer to the document during the hearing and if I determined the document was

relevant to the issues in dispute I would ascertain whether the document had been served to the Tenant.

During the hearing the Landlord referred to four gas bills and four hydro bills that had been submitted to the Residential Tenancy Branch by the Landlord. The Tenant confirmed that these documents had been served to him with the Application for Dispute Resolution and they were therefore accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid utilities?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on January 01, 2014;
- the tenancy ended on April 30, 2014;
- the Tenant agreed to pay monthly rent by the first day of each month for the duration of the tenancy;
- the Tenant agreed to pay 25% of the gas and hydro bill incurred during the tenancy; and
- the Landlord has been ordered to return the Tenant's double security deposit at a previous dispute resolution proceeding, in which the Tenant was granted a monetary Order for \$1,025.00.

The Landlord submitted hydro bills dated February 06, 2014, March 07, 2014, April 07, 2014, and May 07, 2014. The Landlord submitted gas bills dated February 04, 2014, March 05, 2014, April 03, 2014, and May 05, 2014. The Landlord and the Tenant agree that the Tenant's portion of these bills is \$416.25, which has not yet been paid.

The Landlord stated that on May 09, 2014 he provided the Tenant with complete copies of the hydro bills dated February 06, 2014, March 07, 2014, and April 07, 2014, and the gas bills dated February 04, 2014, March 05, 2014, and April 03, 2014, via email.

The Tenant stated that the Landlord sent him an email on May 09, 2014 in which he provided "cropped" sections of three gas bills and three hydro bills. The Tenant submitted photocopies of the information he received, which are not complete copies of the gas bills. The Tenant did not submit images of the hydro bills he received.

The Landlord and the Tenant agree that the Landlord did not serve the Tenant with the hydro bill, dated May 07, 2014, or the gas bill, dated May 05, 2014, until he served the Tenant with evidence for these proceedings.

The Landlord and the Tenant agree that on May 09, 2014 the Landlord sent the Tenant an email in which he informed the Tenant that his share of the utility bill is \$442.34 and that the Landlord owes the Tenant \$45.16. The Tenant stated that he determined that he owed the Tenant \$45.16 as a security deposit refund because he was deducting the amount owing for utilities from the security deposit of \$487.50.

The Landlord and the Tenant agree that on May 13, 2014 the Tenant responded to the Landlord's email of May 09, 2014, in which he asked for the "refund" to be sent by e-transfer.

The Landlord and the Tenant agree that the Landlord served the Tenant with a letter, dated October 27, 2014, in which the Tenant:

- asked for pictures of the "whole of the utility bills pages (in particular, the gas bills);
- declares that he wants to ensure the bills do not include late fees or interest charges;
- that he will give the Landlord consent to deduct the amount for the utilities if the "totals look good to me"; and
- that the Landlord does not have consent to deduct utility charges from his security deposit.

The Tenant stated that he asked for a complete copy of the bills because he was concerned that he may have been charged late fees or interest charges, which he was not responsible for paying.

The Landlord stated that his original calculations for amounts owing was based, in part, on information provided over the phone to him by the utility companies. He stated that when he received the bills he realized the Tenant owed less than his initial calculation.

The Landlord and the Tenant agree that the Landlord did not provide the Tenant with any other copies of the gas/hydro bills until after the Landlord filed this Application for Dispute Resolution.

The Tenant stated that when the Landlord served the Tenant with documents for these proceedings the Landlord reduced the amount of utilities owing from \$442.34 to \$416.35. He stated that upon reviewing the full gas/hydro bills he received with the Application for Dispute Resolution he agreed with the Landlord's calculations that indicate he owed \$416.35.

The Landlord and the Tenant agree that the Tenant sent the Landlord a letter, dated August 29, 2015, in which the Tenant agrees that he owes \$416.35 and he indicates

that he will deduct \$416.35 from the amount owing on the monetary Order he has previously been awarded.

Analysis

On the basis of the undisputed evidence, I find that the Tenant agreed to pay 25% of the gas and hydro charges incurred during his tenancy.

As the Landlord and the Tenant agreed at the hearing that the Tenant owes \$416.35 in gas and hydro charges, I find that the Tenant must pay that amount to the Landlord.

I favour the testimony of the Tenant, who stated that he did not receive complete copies of the hydro/gas bills that are the subject of this dispute until they were served as evidence for these proceedings over the testimony of the Landlord, who stated that complete copies of six of the eight bills were provided on May 09, 2014. In reaching this conclusion I was heavily influenced by the copies of three of the gas bills that the Tenant stated were received on May 09, 2014, which were incomplete and the letter, dated October 27, 2015, in which he asks for images that show the “whole utility bill”.

As the Tenant asked the Landlord, on October 27, 2014, for pictures that show the “whole of the utility bill” and a complete copy of the bill was not forthcoming, I find that the Tenant was justified in not paying the bills until he received complete copies of all the hydro/gas bills.

As the Tenant was justified in not paying the bills until he received complete copies of all the bills; he did not receive complete copies of all of the bills until after the Landlord filed the Application for Dispute Resolution; and he agreed to pay the amount due upon receiving complete copies of all the bills, I dismiss the Landlord’s application to recover the fee for the filing this Application for Dispute Resolution. Had the Landlord provided complete copies of all of the bills in a timely manner, I find it highly likely that the Tenant would have agreed to pay the bills and there would have been no need to initiate these proceedings.

Conclusion

The Landlord has established a monetary claim, in the amount of \$416.35, for unpaid utilities and I grant a monetary Order for this amount.

The Landlord has the option of paying \$608.65 to the Tenant, which is the amount he was ordered to pay at the previous dispute resolution proceedings (\$1,025.00) less the amount of this award (\$416.35). This payment would satisfy both monetary claims and there would be no need to enforce either monetary Order.

In the event the Landlord does not voluntarily pay \$608.65 to the Tenant, his monetary Order may be served on the Tenant, filed with the Province of British Columbia Small Claims Court, and enforced as an Order of that Court. In situations such as these the

Province of British Columbia Small Claims Court typically offsets the two awards and orders one party to pay the difference in the two awards.

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: January 19, 2016

Residential Tenancy Branch