



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

The parties agreed that this tenancy falls under the *Residential Tenancy Act* and the tenant rents a unit in a boat house which is a floating building. The landlord rents the wharf from the Port Metro of Vancouver and owns the building in which the rental unit is located. The parties agreed the tenant has exclusive possession of his rental unit. Rent for this unit is \$900.00 per month due on the 1st of each month and the tenant paid a security deposit of \$450.00 at the start of the tenancy.

The tenant referred to the tenancy agreement clause 3 which states, in part, that:
"No furnishings, equipment, facilities, services or utilities will be provide by the landlord and included in rent EXCEPT those checked below."

The tenant testified that the landlord has checked the box which indicates that electricity is included in the rent. The tenant testified that he has received invoices from the landlord for electricity and paid the first of these invoices for \$91.27. The landlord then gave the tenant a second invoice for electricity for the period of December 22, 2015 to April 25, 2016 for \$603.72. The tenant checked the terms of the tenancy agreement and determined that electricity is actually included in the rent.

The tenant seeks an Order for the landlord to comply with the terms of the tenancy agreement concerning the electricity and to be responsible for the electricity.

The tenant seeks to recover the electricity payment he made of \$91.27 from the landlord and seeks to recover the filing fee of \$100.00.

The landlord disputed the tenant's claims. The landlord testified that the tenant was made aware when he rented the unit that any usage of electricity is the tenant's responsibility. The term of the tenancy agreement that states electricity is provided refers to the fact that this is a marina and power is supplied by the City to the top of the land and from the land to the dock the landlord has to provide the electricity for all of the units. The landlord testified that the tenant was aware of this as he did pay the first invoice for \$91.27.

The tenant asked the landlord why there is such a discrepancy between the first invoice and the second invoice. The landlord responded that it is the usage as shown on the meter for each unit.

The landlord declined to cross examine the tenant.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I am satisfied from the evidence before me that a tenancy exists between the parties for the tenant to rent a unit in a floating boat house. Therefore the *Residential Tenancy Act* does have jurisdiction over this matter.

With regard to the tenant's application for an Order for the landlord to comply with the Act, Regulations or tenancy agreement; I find the tenancy agreement provided clearly states that electricity is included in the rent. I am not persuaded by the landlord's arguments that this checked box only refers to the landlord's responsibility to supply power from the land to the dock.

If the landlord's intention was for the tenant to pay his own electricity then this box should not have been checked and an additional term could have been included in an addendum to the tenancy agreement outlining the landlord's intention that he only intended to supply electricity to the dock and that the tenant is then responsible for any personal usage of electricity.

I therefore uphold the tenant's application and hereby Order the landlord to comply with the tenancy agreement regarding the inclusion of the electricity charges in the rent.

With regard to the tenant's application to recover the electricity paid of \$91.27, as electricity is included in the rent under the terms of the tenancy agreement I find the tenant is entitled to be reimbursed for any payments made for electricity pursuant to s. 67 of the Act.

I Order the tenant to ~~deduct~~ **recover** the amount of **\$91.27** from his next rent payment when it is due and payable **and a Monetary Order has been issued to the tenant to this effect.**

As the tenant has been successful with his application I find the tenant is also entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the Act. I Order the tenant to ~~deduct~~ **recover** this amount from his next rent payment when it is due and payable to the landlord **and a Monetary Order has been issued to the tenant to this effect.**

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. ~~I order the tenant to deduct the amount of \$197.27 from the next rent due and payable to the landlord.~~ **A Monetary Order has been issued to the tenant for the amount of \$191.27 pursuant to s. 67 and 72(1) of the Act. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.**

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON **July 05, 2016**
AT THE PLACES INDICATED IN BOLD.

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 05, 2016

Residential Tenancy Branch