



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CO.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: OLC PSF O MNDC

### **Introduction**

Both parties attended the hearing and the tenant provided sworn testimony that she had served the landlord with the Application for Dispute Resolution in their office and the landlord agreed they received it. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to compensate the tenant for charges related to hot water when it was free to her according to the tenancy arrangement.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that free hot water was a term of the tenancy agreement and she should be reimbursed for all charges relating to the landlord's new arrangements?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said her tenancy began on December 1, 2015 on a fixed term lease expiring November 30, 2016 and rent is \$1313 per month. She was given a Memorandum at that time dated June 17, 2015 signed by the Executive Vice President stating it was additional clarification regarding tenant fees in addition to rent. The terms were as follows:

1. All tenants will receive domestic hot water and cold water at no extra charge.
2. All tenants will be metered and charged for electricity consumption through BC Hydro.
3. All tenants will need to contract directly...for telephone, data, cable and internet
4. Space heating will be through hydronic (water) baseboard heaters; each unit will be metered and tenants will be assessed and charged for hot water consumption for space heating in addition to their rent.
5. Parking.....(not relevant to this Application).

The tenant contends that she now is being charged for hot water and also many other fees for connections, upgrades and maintenance of equipment. She enclosed a bill from a third party supplier as evidence. She contends this is a rent increase with no notice contrary to section 43 or a withdrawal of an essential service contrary to section 27 of the Act. She requests that all other charges on her bill for infrastructure etc. be deleted.

The landlord said there is no provision for free hot water in the tenant's lease. The memorandum was prepared while the developer was in the building stage. The City required the developer (like many others in the City) to engage a third party to manage and bill the energy costs. This is part of the green technology initiative. The third party supplier has to have approval of all charges by the BC Utilities Commission. At the moment there are hearings on the costs and the tenants or owners have the opportunity to object to the Commission. They said there have been some objections filed. The tenant said she had sent two letters but had received no answers yet.

The tenant said her bills to date show no cost for hot water but there are a lot of other fees related to infrastructure. She said this third party supplier has informed her that she will be billed \$100 a month for her 500 sq. ft. apartment. She said she has never had heating bills before although the Memorandum said they would be metered and tenants would be billed for them. None of her bills to date show cost breakdown for heating and hot water; the November bill shows heating cost as zero and nothing for hot water. All the costs seem to be fees related to connections and infrastructure charges. The landlord said these costs are approved by the BC Utilities Commission and they understand they are for costs like dams etc. related to provision of electric power. They are not charges by the landlord for infrastructure or their capital costs. The tenant said the landlord benefitted from this system, although it was imposed by the City, for the units are worth more with green technology.

In evidence is the tenancy agreement, the Memorandum, bills from the third party utility provider and information on the arrangement between the third party and the BC Utilities Commission and the ongoing hearings.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

I find the provision of free hot water was not included as a lease term. However, I find the Memorandum supplied by management at the time was declared to be clarification

of the lease terms so the tenant was entitled to rely on it. I find she did rely on it as she has a limited income.

However, I find the baseboard heaters use a hot water system and the Memorandum specifically said this would be metered and billed to the tenant. As she has never been billed or had to pay for this heating for a large part of her lease term, it has been a benefit to her. It appears the current bills do not show a separate charge for heat and hot water as the hot water is an integral part of the heating system. I find the weight of the evidence is that the landlord is not withdrawing a service of free hot water to the tenant.

I find it credible that the landlord was forced by the City to engage a third party to manage this green technology and they are receiving none of the proceeds from it. I find this is not a rental increase as the charges are approved by the Utilities Commission and relate to their infrastructure, not the landlord's. The landlord has no control over the charges. I find the Utilities Commission are currently holding hearings and considering objections and submissions from interveners regarding these costs; the tenant has also lodged two comment letters to them on these issues. I find the Utility Commission Hearing is the proper forum to lodge this dispute over charges as the Residential Tenancy Branch has no jurisdiction over government charges for energy and no jurisdiction to delete their approved costs from the tenant's bill.

**Conclusion:**

I dismiss the application of the tenant and find she is not entitled to recover her filing fee due to lack of success.

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: November 30, 2016

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Residential Tenancy Branch