



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution, filed April 6, 2016, wherein the Tenant requested monetary compensation from the Landlord for overpayment of the electrical and gas utility and to recover the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which confirmed that this fixed term tenancy began July 1, 2015 and was to end on June 30, 2016. Rent was \$1,100.00 per month payable on the 30th of the month and pursuant to paragraph 3(b) of the agreement, electricity and heat were included in the rental payment.

The Tenant testified that he sought the sum of \$1,065.89 in compensation from the Landlord representing the amounts he paid for electricity and heat, which were supposed to be included in the rental payment.

The Tenant testified that he moved from the rental unit two months prior to the expiration of the one year fixed term in April of 2016. When I asked him why he paid these utilities, despite the fact they were supposed to be included in his rent, he stated that he had recently moved to British Columbia and was unsure what to do. The Tenant testified that the Landlord requested payment of the utilities on a monthly basis, and although he understood they were to be included, he paid as he liked the rental unit and did not want to be evicted.

The Landlord's spouse, B.P., testified on behalf of the Landlord. She stated that the lease provides that the Tenant was to pay 35% of the utilities.

When I brought it to B.P.'s attention that the residential tenancy agreement provided to me in evidence provided that utilities were included in the monthly rental payment, she stated that the lease she had did not. When I asked her to read to me paragraph 3(b), she stated she did not have the lease in front of her.

B.P. then asked if she could submit a copy of the lease in evidence. She stated that she did not realize she was required to provide a copy of the lease in evidence. Notably, the Landlord submitted 24 pages of evidence on June 13, 2016. The residential tenancy agreement was not included in those 24 pages.

Finally, B.P. submitted that the Tenant knew he had to pay 35% of the utilities and that is why he paid them during the tenancy without making any issue of it.

Analysis

The Tenant seeks return of the amounts paid for electricity and heat, which were to be included in his rent pursuant to paragraph 3(b) of the residential tenancy agreement executed by the parties at the start of the tenancy. A copy of the tenancy agreement was provided in evidence and which clearly provides that electricity and heat were included in the rental payment.

The Landlord's spouse, B.P. submitted that the tenancy agreement provided that the Tenant was to pay 35% of the utilities. She further submitted that he paid this amount monthly without question as he knew the agreement included a term that he was to pay a percentage of the utilities.

After careful consideration of the evidence before me, the testimony of the parties and on a balance of probabilities, I find that the agreement between the parties was that the Tenant's electricity and heat were to be included in his \$1,100.00 monthly rent payment.

I prefer the evidence of the Tenant as to the terms of the agreement for the following reasons.

- The written tenancy agreement filed in evidence, clearly indicates that these utilities are included.
- The Tenant filed for dispute resolution on April 6, 2016, some two months before the tenancy ended, seeking reimbursement; I find this supports his position that utilities were included, and is not evidence that he acquiesced to the Landlord's demands that he pay an additional monthly amount.
- The Landlord's agent stated that the tenancy agreement she had included a clause that the Tenant was to pay 35% of these utilities in addition to his monthly rent payment. Despite this claim, she was not able to refer me to the appropriate paragraph during the hearing stating she did not have a copy in front of her during the hearing.
- The Landlord's agent stated she was not aware she should provide a copy of the tenancy agreement she claims to have in her possession in evidence for the hearing. The Notice of Dispute Resolution Hearing which was received by the Landlord and which provided the access codes to facilitate participation in the hearing clearly direct the Landlord to submit their evidence in advance of the hearing and in compliance with the *Residential Tenancy Branch Rules of Procedure*. For greater clarity I reproduce the information contained on the Notice of Dispute Resolution Hearing dated April 6, 2016 as follows:

" ...

GENERAL INFORMATION about your responsibility and the hearing

1. Evidence to support your position is important and must be given to the other party and the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.
2. Residential Tenancy Branch Rules of Procedure apply to the proceedings: for details, contact the RTB or a Service BC Office or check online at www.gov.bc.ca/landlordtenant.

..."

- The Landlord submitted 24 pages of evidence on June 13, 2016. He failed to provide a copy of the residential tenancy agreement with his submissions. Had the Landlord in fact had an agreement which clearly provided that the Tenant was to pay 35% of the utilities, the onus was on the Landlord to submit that document. In all the circumstances, I find that such a document does not exist, and that the residential tenancy agreement provided in evidence is the agreement between the parties.

Accordingly, I find that the Landlord breached the tenancy agreement by insisting the Tenant pay for utilities in addition to his monthly rent. By paying these requested funds, the Tenant suffered a loss equivalent to the amounts paid.

The Tenant is entitled to the amounts he paid for utilities which should have been included in his rental payment and I therefore award him recovery of the **\$1,065.89** claimed. As he has been successful, I also award him recovery of the **\$100.00** filing fee.

The Tenant is entitled to a Monetary Order for the total amount of **\$1,165.89**. This Monetary Order must be served on the Landlord and may, if necessary, be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Tenant is granted compensation equal to the amounts he paid for utilities during the tenancy as well as recovery of the \$100.00 filing fee for a total Monetary Order in the amount of **\$1,165.89**.

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 01, 2016

Residential Tenancy Branch