



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenant, K.M. (the tenants) attended the hearing via conference call and provided affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenants stated that the landlord was served in person on March 1, 2017. I accept the undisputed affirmed evidence of the tenant and find that the landlord has been sufficiently served as per section 90 of the Act.

During the hearing the tenants clarified that she wished to have the hydro transferred into the name of the landlord. The tenant explained that she had previously in a verbal agreement agreed to have the hydro in her name where she would collect 1/3 of the hydro bill amount from the basement tenant. The tenant explained that this has become onerous as the basement tenant is always late paying their portion of the hydro bill. The landlord was advised of this and the tenant was told that it was not his problem.

### Issue(s) to be Decided

Is the tenant entitled to an order for the landlord to change the hydro account name?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants provided written details stating

*Hydro is between upper + lower suite are connected. Landlord refuses to put in his name and lower tennent is abusing hydro and chronicaly is late or does not pay. Last hydro bill was almost double of last year. Suite below is base board heat only, upper forced air by gas furnace. [reproduced as written]*

The tenant provided undisputed affirmed testimony that she had verbally agreed to have the hydro account in her name and that she would collect 1/3 of the hydro costs from the basement tenant. The tenant stated that this process has become too arduous as the basement tenant is repeatedly late paying their portion. The landlord was advised of the situation and the tenant was told that it was not the landlord's problem.

The tenant seeks to have the hydro account name changed to that of the landlord would become responsible for collecting the hydro from each of the tenants. The tenant stated that this would be the same process as if the landlord were collecting the monthly rent.

### Analysis

Residential Tenancy Branch Policy Guideline #8, Unconscionable Terms states in part,

*Under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.*

*Terms that are unconscionable are not enforceable<sup>1</sup>. Whether a term is unconscionable depends upon a variety of factors.*

*A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage. Exploiting the age, infirmity or mental weakness of a party may be important factors. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.*

*The burden of proving a term is unconscionable is upon the party alleging unconscionability.*

I find that this term of this verbal agreement to be grossly unfair. The tenant is not an agent of the landlord nor is the basement tenant subject to a tenancy agreement with this tenant. The tenant is entitled to an order to have the landlord change the hydro account holder name to that of the landlord.

As such, I authorize the tenant to cancel the hydro account in the tenants' name and provide written notice to the landlord of the reason to change the hydro account holder name and the date of it being effective.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the tenant to withhold one-time \$100.00 from the monthly rent.

### Conclusion

The tenant is granted an order for the landlord to change the hydro account name into the landlord's name.

The tenant may withhold one-time \$100.00 from the monthly rent upon receipt of this decision.

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: March 30, 2017

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Residential Tenancy Branch