



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call a witness.

As both parties were in attendance I attempted to confirm that there were no issues with service of the tenant's application for dispute resolution or either party's evidentiary materials. The landlord confirmed receipt of the tenant's materials. I find that the tenant's application for dispute resolution and evidence was served on the landlord in accordance with sections 88 and 89 of the *Act*.

The tenant said that she had not received the landlord's written evidence. The landlord said that she was unaware of the tenant's address for service as one was not provided on the Notice of Dispute Resolution and she was therefore, unable to send her evidence package to the tenant. On this point, I note that the tenant's address for service is clearly identified on the application for dispute resolution she provided to the landlord as part of her dispute resolution hearing package.

Rule 3.17 of the Rules of Procedure grants me with the discretion to determine whether to accept documentary evidence that does not meet the criteria for service provided that it not unreasonably prejudice one party or result in a breach of the principles of natural

justice. I advised the parties that I would only consider those pieces of evidence included in the landlord's package that the tenant confirmed having received on prior occasions, and the weight I place on them would reflect the landlord's failure to serve evidence to the tenant in accordance with the Rules of Procedure.

At the outset of the hearing, the tenant made an application requesting to amend the monetary amount of the claim sought. The tenant testified that since the application was filed she has obtained additional receipts and incurred additional costs for filing and serving her application. The tenant sought to add such expenses as fuel costs, stationary, postal service and phone charges. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure where a formal amendment to a claim has not been served in accordance with the *Act*, I may amend an application at a hearing if the amendment can be reasonably anticipated. As I find that it is reasonable to anticipate that an applicant would incur costs in filing and serving an application for dispute resolution, I amend the tenant's Application to increase the tenant's monetary claim from \$1,659.53 to \$1,763.63.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary award as sought?

Is the tenant entitled to recover the cost of filing the application from the landlord?

#### Background and Evidence

This tenancy was the subject of a previous hearing under the file number on the first page of this decision. At the earlier hearing the parties entered into a settlement to end the tenancy on March 31, 2016. One of the terms of the settlement provides that:

d. The landlord agrees to reimburse the tenant for all hydro and gas utilities paid by the tenant from September 1, 2015 through March 31, 2016 upon presentation of all relevant utility bills.

The tenant testified that she provided the landlord with all relevant utility bills in May, 2016 when she mailed them to her. The tenant said that she received no response from the landlord. The tenant said that she had other pressing matters in her life at that time which prevented her from pursuing the reimbursement of the utility bills. The tenant described her relationship with the landlord as difficult and said she did not think there was any value in contacting the landlord directly.

The tenant's claim for a monetary award of \$1,836.63 included the following items:

<b>Item</b>	<b>Amount</b>
Fortis BC	\$299.83
BC Hydro	\$1,359.70
Filing Fee	\$100.00
Fuel Cost to Travel to Tenancy Branch	\$50.00
Costs for Preparing Application Materials	\$27.10
<b>TOTAL</b>	<b>\$1,863.63</b>

In addition the tenant testified that she made several phone calls related to the application though she was unable to provide an amount of her costs for that expense.

The landlord said that the first time she received the utility bills from the tenant was in April, 2017 as part of the tenant's application for dispute resolution. The landlord testified that she had not received copies of utility bills from the tenant in 2016. The landlord testified that she disagrees with portions of the tenant's calculations and the amount owing to the tenant for utilities is actually, \$1,371.06.

The landlord agrees with the tenant's calculations for the Fortis BC bills and testified that \$299.83 is the amount owing to the tenant.

The landlord testified that she paid the tenant \$177.00 in November, 2015 for the BC Hydro bill and that amount should be deducted from the total claimed. The landlord also said that the tenant included in her utility bills an invoice dated September 9, 2015 for an amount of \$111.47 which is for services rendered in August. The landlord said that the total amount owing to the tenant for BC Hydro bills should be \$1,071.23.

The landlord testified that she was always ready and able to pay the tenant the cost of utilities pursuant to the agreement had the tenant provided her with the bills and a correct forwarding address to issue the payment.

### Analysis

I find that the terms of the settlement of February 15, 2016 were recorded in a final and binding decision made by another arbitrator appointed under the *Act* and I have no jurisdiction to further consider those matters.

I find the landlord's testimony that a payment of \$177.00 was made in November, 2015 to be evidence that was available at the time of the earlier hearing and ought to have

been before the other arbitrator. I find I have no jurisdiction to consider this alleged payment or reduce the amount of utilities as to do so would be reconsidering the earlier binding decision.

I accept the undisputed evidence of the parties that the total amount of the Fortis BC bills for the period of September 1, 2015 through March 31, 2016 is \$299.83. I accept the landlord's evidence that the BC Hydro utility bill dated September 9, 2015 was, in fact paid by the tenant outside of the period of September 1, 2015 through March 31, 2016 and should not be included in the calculation of the tenant's reimbursement. Therefore, I find that the total amount for hydro and gas utilities paid by the tenant from September 1, 2015 through March 31, 2016 is \$1,548.06. Pursuant to the earlier decision I find that the tenant is entitled to a monetary award in the amount of \$1,548.06 from the landlord.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

I find the costs associated with the dispute resolution process, aside from the filing fee, are not recoverable. I therefore dismiss the tenant's claim for costs for preparing the application materials or the fuel costs to attend the Residential Tenancy Branch.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,648.06 which allows the tenant to recover the hydro and gas utilities paid from September 1, 2015 through March 31, 2016, and the filing fee for their application.

The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 4, 2017

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Residential Tenancy Branch