



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

On March 31, 2017, the parties resolved all issues to be heard, except for the issue of unpaid utilities. An interim decision was made on March 31, 2017, which should be read in conjunction with this decision.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid utilities?

Background and Evidence

Rent in the amount of \$1,700.00 was payable on the first of each month. The tenants paid a security deposit of \$850.00 and pet damage deposit of \$850.00. The tenancy ended February 2017.

The landlord claims as follows:

| | | |
|----|----------------------|-------------------|
| a. | Unpaid utilities | \$1,481.72 |
| b. | Filing fee | \$ 100.00 |
| | Total claimed | \$1,581.72 |

At the outset of the landlord's agent stated that they wish to reduce the amount claimed for unpaid utilities to \$1,281.89.

The landlord's agent testified that the tenants shared the utilities, and they were given a \$300.00 credit for each billing period and then the bill was divided in half and each unit was required to pay their portion. The agent stated they seek to recover unpaid utilities in the amount of \$1,281.89.

The tenant testified that the landlord billing is not correct as they are asking for \$326.44, when the invoice was at zero, as they were overcharged on the account.

The tenant testified that the last invoice for November 25, 2016 to January 25, 2017 was the amount of \$2,210.91, which was significantly greater than any previous month, included 2015/2016 for the same time. The tenant testified that the difference in the usage was due to the faulty furnace, which caused the electrical panel to spark and burn. The tenant stated they should not be responsible for additional usage that was not due to their usage.

The landlord's agent responded that they were unsure why they were asking for \$326.44. The agent stated that they have provided a letter from their electrician indicating the energy usages lines up with the furnace usage. The landlord stated the tenants' portion of the invoice is \$955.46.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I accept the tenant's evidence that invoice #6 was zero. The landlord's agent could not justify how they determined the amount payable by the tenant was \$326.44. Therefore, I dismiss this amount claimed.

In this case, the evidence of the tenant was the electrical consumption was significantly higher due to a faulty furnace. I am not satisfied that the letter provided by the landlord from the electrical is based on reviewing the evidence of the actual usage charge by BC Hydro. However, I am satisfied that the furnace was faulty as the invoice from the heating company indicated that the fan motor and blower were faulty and in bad condition.

For November 25, 2016 to January 25, 2017, which was a 62 day period the energy charged was \$2,210.91, if I divide the amount by 62 the daily amount is \$35.65. This is significantly higher than the previous months.

Further, I have reviewed the invoice from December 10, 2015 to January 6, 2016, which was a 28 day period and the energy charge was \$397.15, if I divide the amount by 28 the daily amount is \$14.18.

I accepted there was a small increase to the amount of the energy charge by BC Hydro; however, I find it highly unlikely that the usage for a similar period is 250% higher. The only evidence supporting an increase during this period was a faulty furnace.

Therefore, I am not satisfied that the landlord is entitled to claim the amount of \$955.45. I find a reasonable amount for compensation based on the year prior is a daily amount of \$15.00, taking into consideration the rate difference and multiply that by 62 days; the energy charge would be \$930.00. That amount is reduced by the monthly credit by the landlord of \$300.00 and divided equally between the two units leaving the amount of \$315.00 due. Therefore, I find the landlord is entitled to recover the amount of **\$315.00** from the tenants.

I find that the landlord has established a total monetary claim of **\$415.00** comprised of the above-described amount and the \$100.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for unpaid utilities.

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: June 20, 2017

Residential Tenancy Branch