



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OLC; LRE; PSF; RP; FF

Introduction

This is the Tenants' Application for Dispute Resolution seeking an Order that the Landlord comply with the Act, regulation or tenancy agreement; an Order restricting or suspending the Landlord's right to access the rental unit; an Order that the Landlord provide services or facilities as required by the tenancy agreement or law; an Order that the Landlord make regular repairs to the rental unit; and to recover the cost of the filing fee from the Landlord.

Both parties attended the Hearing and gave affirmed testimony.

The Tenants' Application was amended, by consent, to reflect the accurate spelling of the Landlord's last name.

The Landlord acknowledged that the Notice of Hearing documents were hand delivered to the Landlord "at the beginning of August", 2017. It was determined that the parties exchanged their documentary evidence.

Issue(s) to be Decided

Should the Landlord's access to the rental unit be restricted or suspended? Should the Landlord be ordered to make repairs to the rental unit and to provide services or facilities to the Tenants? Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

Background and Evidence

The Landlord provided a copy of the tenancy agreement, signed by the parties on September 9, 2016. This tenancy began on September 15, 2016. Monthly rent is \$2,000.00, due on the first day of each month. Rent does not include utilities. The tenancy agreement provides: "Heat and electricity bills 100% paid by tenant".

The rental unit is the main suite of a house, with 5 bedrooms and 3 bathrooms. There is an additional suite (the "Extension"), which is not part of the Tenant's suite, and which has one bedroom, one bathroom and a kitchen. The Extension is currently vacant, but was rented by another occupant under a separate tenancy agreement until September 17, 2017. The

Extension is approximately $\frac{1}{4}$ of the square footage of the rental property and the Tenants' suite is approximately $\frac{3}{4}$ of the square footage. If the rental property was divided into four parts, the Tenants portion would occupy the upper half and bottom right hand side of the rental property. The Extension would occupy the bottom left hand side of the rental property.

Rent for the Extension included utilities. The rental unit is heated by a furnace and supplemented by electric baseboards. The Extension is heated by electric baseboards only. The other occupant paid the Tenants \$20.00 a month for his share of utilities.

The Tenant PW gave the following testimony:

PW testified that she was not provided with a copy of the tenancy agreement until she received it in the Landlord's documentary evidence. PW stated that she did not agree to pay 100% of the utilities and that the clause in the tenancy agreement must have been added after she signed the document.

PW testified that the electricity bills were excessive, due to poor insulation. She provided copies of 2 electricity bills, in her name, which provide the following:

November 16, 2016 to January 16, 2017 (2 months)	\$587.21
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*note this bill also includes a balance past due of \$255.17 and a late payment charge of \$3.82, for a total owing of \$846.20

January 17, 2017 to March 16, 2017 (2 months)	\$465.02
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*note this bill also includes a balance past due of \$346.20 and a late payment charge of \$18.71, for a total owing of \$829.93

The Tenants submit that the Landlord should pay $\frac{1}{2}$ of the total outstanding amount, which share they calculate to be \$501.16. However, the Tenants added the GST twice in their calculation and also miscalculated the total amount of the $\frac{1}{2}$ share, which is actually $\$1052.23 / 2 = \526.11 . The Tenants did not indicate what specific amount they were seeking in the "monetary order" section of their Application for Dispute Resolution.

The Tenants provided 4 photographs of the crawl space "under addition" (under the Extension).

PW testified that the house is very cold because it is not properly insulated. She stated that the water pipes in one of the bathrooms froze and that the "front bedroom" was also very cold. PW stated that there is a hole in the bedroom window "the size of a baseball".

PW stated that she could not have the dryer and baseboards on at the same time; or the dryer and vacuum cleaner; or the dryer and the stove, because the breaker would trip. PW stated

that she sent text messages to the Landlord about problems with the power and other issues. She stated that she also “put things in writing”, but didn’t keep copies.

PW stated that the Landlord and her husband “just walked into the suite without knocking, twice”; however that this is “no longer an issue”.

The Tenants want the Landlord to have a licenced electrician look at the breaker box to determine why there is not enough power to run the appliances and the baseboard heaters at the same time. They also want a building inspector to inspect the house for code violations and a carpenter to install plywood under the house for insulation. PW stated that when the Landlord bought the house, it was purchased “as is” without any building inspection.

PW stated that the Landlord did not give receipts for rent paid in cash until “about 4 months ago”.

The Landlord RT gave the following testimony:

RT purchased the rental property in April, 2016. The previous owner added the Extension in 2012, and lived in the Extension for 4 years. The Landlord has not done any updates to the Extension since the rental property was purchased. RT provided a copy of a letter from the previous owner in evidence. This letter provides, in part:

“... me and my family lived in this house since 2012 to April 2016 and when be bought in 2012 we did renovations. We lived there almost 4 years and we never had any issues regarding the bills, our bills are totally normal like in summer time less than \$100 and during winter time max is \$150 and also we never had power goes out issues. In the extension part there is plywood on top of that insulation and on top double layer of thick poly.”

[Reproduced as written.]

RT stated that the Tenants did not mention any hole in the bedroom window. She stated that the Tenants alerted the Landlord about a bug infestation, but that the Landlord paid for an exterminator. The Landlord testified that she also changed the stove when the Tenants advised that the old one was broken.

The Landlord disputed that the rental property was not properly insulated. The Landlord stated that there was sufficient insulation and that plywood is not required. The Landlord testified that electric bills have gone up markedly since the beginning of the tenancy and that last winter was particularly harsh. The Landlord stated that the electricity bills used to be in the Landlord's name, and were not that high. RT testified that the Tenant is a carpenter and uses power tools, which drive up the electricity consumption.

The Landlord testified that the electricity bills were in the Landlord's name until September 22, 2016. She provided copies of electricity bills of the rental property from when the bills were still in her name:

June 17 to July 14, 2016 (1 month)	\$54.30
July 15 to September 4, 2016 (2 months)	\$109.01

The Landlord also provided copies of two sets of electricity bills for her own residence, each set a year apart, to indicate that the cost of electricity increased sharply:

1. November 13, 2015 to January 12, 2016 (2 months)	\$136.80
November 11, 2016 to January 12, 2017 (2 months)	\$556.86
2. January 13 to March 11, 2016 (2 months)	\$137.88
January 13 to March 14, 2017 (2 months)	\$512.43

The Landlord testified that she has just accepted an offer on the sale of the rental unit.

Analysis

Should the Landlord's access to the rental unit be restricted or suspended?

The Tenant PW acknowledged that there is no longer an issue with the Landlord accessing the rental unit without permission or notice. Therefore, this portion of the Tenants' Application is dismissed.

Should the Landlord be ordered to make repairs to the rental unit and to provide services or facilities to the Tenants?

This is the Tenants' Application and therefore the onus is on the Tenants to provide sufficient evidence, on the balance of probabilities, that the rental property is not sufficiently insulated and that there are electrical problems in the rental unit. Based on the evidence provided by both parties, I find that the Tenants have not provided sufficient evidence and this portion of their Application is dismissed.

Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

Under the Section 6 of 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.

I find that the requirement in the tenancy agreement that the Tenants must pay for the cost of utilities used by another occupant of the rental property is unconscionable.

Pursuant to the provisions of Sections 62 and 67 of the Act, I Order that the Landlord reimburse the Tenants for utilities the Tenants paid on behalf of the other occupant, for the amounts proven by the Tenants in their documentary evidence. I Order that the Tenants be reimbursed for ¼ of the amount billed for November 16, 2016 to March 16, 2017, less \$20.00 per month paid by the other occupant for that time period:

Nov 16, 2016 to Jan 16, 2017 total owed (including past due charges) \$846.20

January 17 to March 16, 2017
\$465.02

\$1,311.22

\$1,311.22 x ¼ = \$327.81

Less \$20.00 x 4 months -\$80.00

TOTAL **\$247.81**

I FURTHER ORDER that the clause in the tenancy agreement which provides that “heat and electricity bills 100% paid by Tenant” be struck. I Order that payment of the utility bills be the responsibility of the Landlord and that the bills be returned to the Landlord's name. I Order that the Tenants, upon being presented with a copy of the utility bills by the Landlord, must pay the Landlord 100% of the utility bills when the Extension is vacant and 75% of the utility bills when the Extension is occupied.

The Tenants are at liberty to apply for further compensation from the Landlord for the period of time between September 15, 2016 to November 15, 2016, and between March 17, 2017, to when the utility bills are returned to the Landlord's name.

The Tenants have been partially successful in their Application and I find that they are entitled to recover the cost of the **\$100.00** filing fee from the Landlord.

Conclusion

I hereby provide the Tenants with a Monetary Order in the amount of **\$347.81** for service upon the Landlord. This Order may be enforced in the Provincial Court of British Columbia (Small Claims Court).

I Order that the utility bills be placed in the Landlord's name and be paid by the Landlord effective immediately. Upon presentation of the utility bills to the Tenants, I Order that the Tenants pay 100% of the bills to the Landlord when the Extension is vacant, and 75% of the bills to the Landlord when the Extension is occupied.

The Tenants are at liberty to apply for further compensation from the Landlord for the period of time between September 15, 2016 to November 15, 2016, and between March 17, 2017, to when the utility bills are returned to the Landlord's name.

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 20, 2017

Residential Tenancy Branch