



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC PSF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on May 22, 2018 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement; and
- an order that the Landlord provide services or facilities required by the tenancy agreement or law.

The Tenant W.R. attended the hearing in person and provided affirmed testimony. W.R. was assisted by N.M., an advocate. The Landlord did not attend the hearing.

W.R. and N.M. confirmed that the Landlord was served with the Application package by registered mail. N.M. advised that service in this manner was paid for by the health authority. Although a copy of the receipt was not available for the hearing, N.M. testified a copy could be produced. Pursuant to section 71 of the *Act*, I find the Landlord was sufficiently served with the Application for the purposes of the *Act*.

W.R. was given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement?
2. Are the Tenants entitled to an order that the Landlord provide services or facilities required by the tenancy agreement or law?

Background and Evidence

The Tenants rent a basement suite at the rental property. On behalf of the Tenants, W.R. confirmed the tenancy began on September 23, 2013. Rent is due in the amount of \$750.00 per month, which is shared between the two Tenants. W.R. testified that he paid a security deposit in the amount of \$750.00, which the Landlord holds.

W.R. testified the Landlord has asked the Tenants to vacate the rental unit if they continue to refuse to pay BC Hydro. Accordingly, the Tenants have found alternative rental accommodation and intend to vacate the rental unit on July 31, 2018. Rent has been paid to July 31, 2018.

First, the Tenants sought an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement. Specifically, W.R. advised the Tenants were required to pay a security deposit equal to one month's rent, contrary to the *Act*. He would like to recover the overpayment of \$375.00.

Second, the Tenants sought an order that the Landlord provide services or facilities required by the tenancy agreement or law? Specifically, W.R. sought to recover \$1,000.00 that was previously paid to the Landlord for utilities. However, during the hearing, both W.R. and N.M. confirmed the Tenants participated in a previous dispute resolution hearing and were granted a monetary award of \$1,000.00, which has not been paid by the Landlord.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

With respect to the Tenants' request to recover the overpayment of the security deposit, section 19 of the *Act* states:

(1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

[Reproduced as written.]

As noted above, W.R. testified the Tenants have paid rent to July 31, 2018 and intend to vacate the rental unit on that date. As a result, the Tenants are unable to deduct the overpayment from a future rent payment. Accordingly, to give effect to section 19 of the *Act*, I grant the Tenants a monetary award of \$375.00 on account of the overpayment. I order the parties to deal with the balance of the security deposit, or \$375.00, in accordance with section 38 of the *Act*.

With respect to the Tenants' request regarding the \$1,000.00 payment to the Landlord for BC Hydro, I find that due to section 77(3) of the *Act* and the legal principal of *res judicata*, I cannot grant the Tenants' request regarding the BC Hydro payment as this matter was already heard and decided upon at a previous dispute resolution hearing.

Having been successful, I also grant the Tenants an award of \$100.00 in recovery of the filing fee paid to make the Application. Accordingly, pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$475.00.

Conclusion

The Tenants are granted a monetary order in the amount of \$475.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The parties are ordered to deal with the balance of the security deposit, or \$375.00, in accordance with section 38 of the *Act*.

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: July 18, 2018

Residential Tenancy Branch