



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            MNDCT, OLC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking compensation for money owed, damage, or loss under the Act, regulation, or tenancy agreement, an order for the landlord to comply with the Act, regulation or tenancy agreement and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s assistant, who is their son, and the Landlord, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of the Application or the Notice of Hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be mailed to them at the mailing addresses provided in the hearing.

### Preliminary Matters

At the outset of the hearing I identified that the documentary evidence before me from the Tenant had been received by the Residential Tenancy Branch (the “Branch”) less than 15 days before the date of the hearing and inquired about the service of these documents on the respondent.

The Tenant testified that the documentary evidence before me was sent to the Landlord by registered mail on September 6, 2018, and provided me with the registered mail tracking number. With the consent of the parties I logged into the mail service providers website and verified that the registered mail was sent as described above. The Landlord testified that due to issues with his identification and verification of his address, he was unable to pick up the registered mail for some time and the mail service provider’s website confirmed that although notice cards were left on September 7, 2018, and September 12, 2018, the registered mail was not picked up until September 22, 2018.

Section 3.14 of the Rules of Procedure states that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Branch directly or through a Service BC Office not less than 14 days before the hearing. Despite the foregoing, the Landlord acknowledged receipt of the Tenant’s documentary evidence and stated that he had sufficient time to consider and respond to it. As a result, I accepted this evidence for consideration in the hearing as I found there was no prejudice to either party in doing so.

### Issue(s) to be Decided

Is the Tenant entitled to compensation for money owed, damage, or loss under the *Act*, regulation or tenancy agreement?

Is the Tenant entitled to an order for the Landlord to comply with the *Act*, regulation or tenancy agreement?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The parties agreed that only a verbal tenancy agreement is in place and that as part of that agreement, the Tenant is required to place electricity and gas bills in his name for the entire property. The parties agreed that the property consists of a single family home with two rental units, as well as a coach house. The parties also agreed that the Tenant is only responsible for 60% of the gas and electricity bills and that the remaining 40% is to be paid by the Landlord on behalf of the occupants in the other two rental units.

The Tenant stated that there was also an agreement for him to place cable and internet bills in his name for shared use by the occupants of the other rental units and that the same 60/40 split applies to the cable and internet bill. The Landlord disputed ever having an agreement with the Tenant regarding cable or internet. The Landlord testified that the coach house occupant has their own cable and internet service and that the occupants in the lower rental unit of the house don't even have a TV. The Landlord stated that it is up to the Tenant if they wish to share cable and internet services with other occupants of the property but denied that any agreement, verbal or otherwise, has ever been in place between him and the Tenant regarding cable and internet bills. The Tenant did not submit any documentary or other evidence in support of his testimony that the Landlord is responsible to pay 40% of the cable and internet bill on behalf of other occupants of the property.

The Tenant submitted copies of the utility bills and a detailed accounting of the total amounts owed for utilities since the start of the tenancy as follows:

- \$177.94 for gas,
- \$1,374.90 for electricity; and
- \$1,382.91 for cable and internet.

The Tenant stated that the Landlord owes 40% of the above noted bills under the tenancy agreement in the amount of \$1,174.31.

The Landlord agreed that he owes 40% of the gas and electricity bills and agreed to the total amounts of those bills since the start of the tenancy as noted above. However, the Landlord stated that he paid \$621.14 towards these bills on September 15, 2018, and the Tenant confirmed receipt of this payment. As a result, the Landlord disputed that he owes any further compensation to the Tenant at this time for gas or electricity. Further to this, the Landlord denied owing any amount towards the cable and internet bills.

Although the Tenant also sought \$262.50 for the cost of a pest control bill in their Application, in the hearing the parties agreed that this matter has already been resolved as the Landlord paid this amount to the Tenant on September 15, 2018.

The Tenant also sought \$13.35 for the cost of registered mail and \$100.00 for recovery of the filing fee.

### Analysis

Although both parties were in agreement that the property contains three separate rental units and that the Tenant is to place the electricity and gas bills in his name for the entire property, section 62(3)(b) of the *Act* states that a term of a tenancy agreement is not enforceable if the term is unconscionable. Section 3 of the regulation states that for the purpose of section 6(3)(b) of the *Act*, a term of a tenancy agreement is “unconscionable” if the term is oppressive or grossly unfair to one party. Further to this, Residential Tenancy Policy Guideline (the “Policy Guideline”) #1 states that a term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility bill in his or her name for a premises the tenant does not occupy is likely to be found to be unconscionable as defined by the regulation. It also states that if the tenancy agreement requires one of the tenants to have the utilities in their name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill may claim against the landlord for the other tenant’s share of the unpaid utility bills.

Based on the above, I find that the term of the verbal tenancy agreement requiring the Tenant to place the gas and the electricity bill in their name for the entire property, including a separate basement suite and coach house to which they do not have access or occupancy, unconscionable as defined by section 3 of the regulation and unenforceable pursuant to section 6(3)(b) of the *Act*. As a result, and pursuant to section 62(3) of the *Act*, I order the Landlord to, within 30 days of the date of this decision; place the electricity and gas bills in their own name and to seek the amounts owed by each occupant or groups of occupants for these bills under their individual tenancy agreements directly from those parties in accordance with the *Act*.

I also find that the Tenant is entitled, pursuant to Policy Guideline #1 and section 7 of the *Act* to claim any unpaid gas and electricity bill amounts for the other rental units on the property from the Landlord. As the parties agreed that the Tenant is only responsible for 60% of the gas and electricity bill and that the total amount owed for these bills since the start of the tenancy is \$1,552.84, I find that the Landlord is responsible for \$621.14 of these bills which represents 40% of the total owed. As the parties agreed that the Landlord paid a total of \$621.14 towards these bills on September 15, 2018, I find that the Tenant is not entitled to any further compensation for the gas or electricity bills at this time and I dismiss their claim for compensation towards the \$1,552.84 paid for these bills without leave to reapply. The Tenant remains at liberty to file a subsequent Application, should they need to do so, for any unpaid amounts of the gas or electricity bills not covered in this hearing or for the period between now and the date upon which the Landlord transfers the gas and electricity bills into their own name.

Although the Tenant stated that there was also an agreement in place regarding the cable and internet bills, the Landlord denied this claim and the Tenant did not provide or point to any documentary or other evidence in support of their claim that any such agreement existed. As a result, I find that the Tenant has failed to satisfy me, on a balance of probabilities, that any such

agreement existed in relation to cable and internet services and I therefore dismiss the Tenant's claim for reimbursement of 40% of the cable and internet bills without leave to reapply.

Although the Tenant sought \$262.50 for the cost of a pest control bill in their Application, in the hearing the parties agreed that this matter has already been resolved as the Landlord paid this amount to the Tenant on September 15, 2018. As a result, I dismiss the Tenant's claim for reimbursement of this amount without leave to reapply.

The Tenant also sought \$13.35 for the cost of registered mail sent to the Landlord in relation to this dispute. Section 88 and section 90 of the *Act* provide several different methods for the service for documents, a number of which are free, and as a result, I find that the Tenant was not required to spend \$13.35 in order to serve these documents on the Landlord in compliance with the *Act*. Further to this, the Applicant is required by both the *Act* and the Rules of Procedure to serve documents on the respondent in relation to this hearing and I therefore find that the cost of this responsibility, should there be one, lies squarely with the Applicant. As a result, I dismiss the Tenant's Application for reimbursement of this cost without leave to reapply.

As the majority of Tenant's claims have been dismissed, I also decline to grant the Tenant recovery of the \$100.00 filing fee.

### Conclusion

The Tenant's monetary claims are dismissed without leave to reapply.

Pursuant to section 62(3) of the *Act*, I order the Landlord to, within 30 days of the date of this decision, place the electricity and gas bills in their own name and to seek the amounts owed by each occupant or groups of occupants for these bills under their individual tenancy agreements directly from those parties in accordance with 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: September 25, 2018

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Residential Tenancy Branch