



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, FTT

### Introduction

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

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord and one of the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant in attendance appeared on behalf of both tenants.

The tenant testified that the landlord was served the notice of dispute resolution package via registered mail on January 9, 2019. The tenant provided a Canada Post registered tracking number (included on the cover of this decision). The landlord confirmed receipt of the notice of dispute resolution package, but did not specify the date. I find that the landlord was deemed served with this package on January 14, 2019, five days after the tenants mailed the package, in accordance with sections 89 and 90 of the Act.

The landlord testified that the tenants were personally served with her evidence on January 28, 2019. The tenant confirmed this. I find that the tenants were served with the landlord's evidence package on January 28, 2019, in accordance with section 88 of the Act.

The tenant testified that she served the landlord with additional documentary evidence via registered mail on January 28 or 29, 2019. The tenant was not able to provide a

Canada Post registered tracking number. The landlord confirmed receipt of this evidence on February 4, 2019. The landlord testified that she had sufficient time to review the evidence in advance of the hearing. Accordingly, I accept the late-filed documents into evidence, and find that the landlord was served with this package on February 4, 2019, in accordance with section 88 of the Act.

### **Issue(s) to be Decided**

Are the tenants entitled to:

- 1) An order compelling the landlords to comply with the Act?
- 2) Reimbursement of their filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the parties' evidence and my findings are set out below.

The parties entered into a fixed term tenancy agreement on July 1, 2018 (ending June 30, 2019). The rental property was the upper floor of a two-storey single-detached home. Monthly rent was \$1,300.00, and the tenants paid a security deposit and pet damage deposit each in the amount of \$600.00 (\$1,200.00 total) to the landlord. Utilities were not included in the monthly rent.

At the time the parties entered into the tenancy agreement, the landlord already rented out the basement suite to another tenant (who continues to reside there).

The parties have entered into mutual agreement to end the tenancy as of February 15, 2019.

The parties agree that, prior to entering into the tenancy agreement, the landlord offered the tenants a choice of either paying monthly rent of \$1,500.00 including utilities or \$1,300.00 plus utilities for the entire house. The tenants elected to pay \$1,300.00 plus utilities for the entire house. The tenant testified that they chose this option as they were told by the landlord that the whole house's monthly utilities were, at most, \$150.00.

The utilities for the house were put in the tenants' names.

The landlord testified that the basement tenant pays the landlord \$50.00 per month for heating.

The tenant testified that the tenants' monthly gas bill was \$75.00 and that they paid the following amounts between July 2018 and January 2019:

|  |                   |
|--|-------------------|
| <b>Gas</b>                                     |                   |
| July 2018 to January 2019 (7 months x \$75.00) | \$525.00          |
| <b>Hydro</b>                                   |                   |
| July to September 2018                         | \$140.69          |
| September to November 2018                     | \$235.24          |
| November 2018 to January 2019                  | \$379.63          |
| <b>Subtotal</b>                                | <b>\$755.56</b>   |
|  |                   |
| <b>Total</b>                                   | <b>\$1,280.56</b> |

From July 2018 to January 2019, the average combined monthly bill for hydro and gas was \$182.93 (\$1,280.56/7 months).

The tenants also had to pay a one-time connection fee for hydro of \$106.50.

The tenant testified that she has never collected any money for gas or hydro from the basement tenant, and alleges that the basement tenant uses much of the hydro and gas that the tenants are paying for.

The tenant testified that the tenants have never been compensated by the basement tenant or the landlord for the basement tenant's share of electricity.

The tenant argues that the basement tenant should be responsible for 50% of the utilities paid thus far.

The tenants argue that the arrangement whereby they are responsible to pay the whole house's utility bill is unconscionable per Policy Guideline 8, ought to be declared void, and that the landlord ought to compensate them for 50% of the utility bills paid thus far (\$640.28).

The landlord argues that the tenants agreed to this arrangement before entering into the tenancy agreement, and that it ought to be upheld. Furthermore, she testifies that the basement tenant is rarely home (he works in camps for much of the month), and would

use very little of the hydro and gas. The landlord also submitted into evidence an email from the basement tenant wherein he states he occupies the basement six days (or sometimes 12 days) a month. The tenants deny this is the case, and testify that the basement tenant is frequently in the basement unit.

## **Analysis**

### **Unconscionability**

Policy Guideline 1 reads:

A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.

Policy Guideline 8 says of unconscionable terms:

Under the Residential Tenancy 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. Whether a term is unconscionable depends upon a variety of factors. A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party.

I find that the requirement that the tenants pay the utilities for the entire rental property to be unconscionable. The tenants are paying for the entirety of the basement tenant's utilities, and are not receiving any compensation for it. Furthermore, on the landlord's own evidence, the basement tenant is paying the landlord \$50.00 for heating. It is unconscionable that the landlord receives payment from the basement tenant for a service that is paid entirely by the tenants.

### **Amount of Damage**

The tenants pay an average of \$182.93 per month in utilities (\$198.15 if you include the costs of the connection fee). In note that this is less than the \$200.00 difference in rent that the tenants would have paid, had they entered into a tenancy agreement which included utilities.

The tenants bear the onus of proving how much gas and hydro the basement tenant uses. They allege that he uses half, and that they ought to be compensated by the landlord for this amount. On the evidence that is before me I cannot find that the basement tenant accounts for the cost of half the monthly utilities. It is unclear what portion of the gas and hydro bill are attributable to him, and I have conflicting evidence as to for how long he occupies the basement unit on a monthly basis.

However, the landlord receives \$50.00 month from the basement tenant for heating. I find that it is the tenants who, in fact, pay the basement tenant's heating bill, not the landlord. The payment of this money is misdirected. I find that the tenants are entitled to have received this amount, not the landlord. Accordingly, I order that the landlord pay to tenants \$350.00 (\$50.00 x 7 months) representing the funds she received from the basement tenant for heating.

As the tenancy is ending on February 15, 2019, I decline to make any order regarding removing the tenants' names from the utilities service.

As the tenants were successful in their application, I order that the landlord reimburse them their filing fee of \$100.00, pursuant to section 72 of the Act.

### **Conclusion**

Pursuant to sections 67 and 72 of the Act, I find that the tenants are entitled to a monetary order in the amount of \$450.00 representing filing fee reimbursement and compensation for their payment of the basement tenant's utilities. Should the landlord fail to comply with this order, this order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial 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: February 15, 2019

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Residential Tenancy Branch