# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes For the Landlord: MNDCL-S, FFL
For the Tenant: MNSD, FFT

Introduction

In this dispute, the landlord seeks compensation from her former tenant for hydro costs for which the tenant was allegedly responsible. The tenant disputes that she was responsible for this and seeks compensation from her former landlord for the return (and doubling) of the security deposit. Both parties seek recovery of the filing fee.

The landlord applied for dispute resolution on December 17, 2018 and the tenant applied for dispute resolution on March 9, 2019. A dispute resolution hearing was held on April 5, 2019. Both parties attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. Neither party raised any issue with respect to the service of documents or evidence.

I reviewed evidence submitted that met the requirements of the *Rules of Procedure*, and to which I was referred, but only evidence relevant to the issues of these applications was considered in my decision.

Issues

1. Is the landlord entitled to compensation under section 67 of the Act for unpaid hydro in the amount of $1,456.73?
2. Is the landlord entitled to compensation under section 72 of the Act for the filing fee in the amount of $100.00?
3. Is the tenant entitled to compensation under section 38 of the Act for the return and doubling of the security deposit, in the amount of $1,750.00?
4. Is the tenant entitled to compensation under section 72 of the Act for the filing fee in the amount of $100.00?

Background and Evidence

The landlord testified that the tenancy began October 1, 2017. (The tenant disputed this and said that it began September 1, 2018). Monthly rent was $1,750.00 and the tenant paid a security deposit of $875.00. There was no pet damage deposit.

The landlord testified that the written tenancy agreement—a copy of which neither party submitted into evidence—did not include hydro. The landlord further testified that the tenant was supposed to put her name on the hydro, pay the hydro, and paying the difference of any amount at the time of reconciliation of the hydro account once a year.

According to the landlord, it would therefore be in a tenant's interest to keep hydro use to a minimum, or, at least not use it in excess which would result in an end-of-year reconciliation much higher than might be expected.

On March 27, 2018, the landlord sent a text to the tenant which read as follows (reproduced as written, formatted for brevity):

> Hi just a heads up your hydro was high last month. Please turn down the heat when you're not home. This is the most expensive time of year and We're coming into summer when heat is off so you should be ok when reconciliation comes if you keep your heat down, thanks.

The tenant responds as follows:

> Hi [landlord], Thank you for letting us know. We will be sure to be more careful from now on.

The landlord argued that this text can be interpreted to mean that the tenant was aware that she was responsible for the hydro.

At the end of the tenancy, the landlord discovered that the tenant had not put the hydro in her name. The landlord seeks compensation in the amount of $1,456.73 for the cost of the hydro over the duration of the tenancy.

The tenant testified disputed that hydro was extra. She testified that it was "quite clear orally and in the contract that we were only paying $1,750.00." The amount of rent was the maximum that the tenant's budget allowed. She was "shocked [and] flabbergasted"

when the landlord brought it to her attention that hydro was supposed to be in the tenant's name. The tenant assumed all along that the landlord was paying for the hydro.

During the landlord's rebuttal, the landlord cross-examined the tenant and asked her "do you remember" various boxes that are ticked off at the bottom of the tenancy agreement. She asked if the tenant recalled that the box that would have indicated hydro being included was not ticked off. The tenant responded, "mmm, not specifically."

The tenant then testified that she handed the landlord's son a paper on which her forwarding address was written; the son put the paper in the mailbox. This was done on the morning on December 1, 2018. Upon returning later that afternoon, around 5:30 PM, the landlord met the tenant and the landlord withdrew the paper from the mailbox.

The landlord commented during the tenant's testimony about the forwarding address being provided that she had "no dispute" with the tenant's recollection of events.

In the tenant's claim and Monetary Order Worksheet, there is a line that deducts $100.00 from the security deposit for "a sofa that [the landlord] bought from us and then decided she didn't want." The tenant's description notes that there is "No document, but I agreed to deduct $100 from our security deposit". The tenant claims compensation for a doubling of the security deposit before the deduction is made on the worksheet.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

**Landlord's Claim**

The landlord claims that the tenant was (a) supposed to put the hydro in her name and (b) responsible for paying the hydro, including any increase that arose at the time of reconciliation with the account. The tenant disputes that hydro was extra, and instead submitted that hydro was included in the rent.

Neither party could produce the tenancy agreement that would have shed light on this disputed fact. While the tenant may very well have a copy of the tenancy agreement hidden away somewhere, the landlord carries the burden of providing evidence to establish that hydro was not included in the rent and thus the tenant's responsibility.

The text of March 27, 2018 does not prove, in my opinion, that the tenant was acknowledging responsibility for paying hydro. It may, I concede, demonstrate that the tenant might be responsible for a higher amount (or difference) come reconciliation, but it does not definitively prove that the tenant was otherwise responsible for hydro other than at the time of reconciliation, or any hydro for that matter.

If hydro was supposed to be in the tenant's name (and I find it surprising that the landlord only discovered that the account was never put in the tenant's name until the tenancy came to an end), then it is nonsensical for a landlord to be telling a tenant to turn down the heat. In other words, a reasonable person would expect a landlord to be instructing a tenant to decrease utility use only when that utility is included in the rent.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to prove that the tenant was to pay for hydro.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving her claim for compensation against the tenant.

As such, the landlord's application is dismissed without leave to reapply.

**Tenant's Claim**

Section 38(1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (1) repay any security deposit or pet

damage deposit to the tenant, or (2) apply for dispute resolution claiming against the security deposit or pet damage deposit.

In this case, the landlord received the tenant's forwarding address in writing on December 1, 2018. She did not dispute this fact. The landlord therefore had until December 15, 2018 to apply for dispute resolution or repay the security deposit. The landlord did not apply for dispute resolution (and the Residential Tenancy Branch did not receive the landlord's Application for Dispute Resolution) until December 17, 2018.

[The following is redacted from my Decision of April 10, 2019:]

~~Thus, the landlord did not apply for dispute resolution or return the security deposit within the required time as required by subsection 38(1) of the Act.~~

[The following italicized portion is added to the Decision:]

*As the 15th day fell on a Saturday when the Residential Tenancy Branch is not open for business, the landlord had until December 17, 2018 to file for dispute resolution. She filed for dispute resolution on December 17, 2018, and as such applied within the statutory timeline.*

Regarding the tenant's supposed deduction, there is no written document supporting this, nor did the landlord produce any evidence that the tenant agreed to this deduction.

Section 38(4) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit *if, at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount* to pay a liability or obligation of the tenant. Here, there was nothing in writing, and so the landlord did not have a right to retain any amount from the security deposit.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving her claim for compensation for the return of the security deposit.

[The following is redacted from my Decision of April 10, 2019:]

~~Section 38(6) of the Act states that~~

~~(6) If a landlord does not comply with subsection (1), the landlord~~

~~(a) may not make a claim against the security deposit or any pet damage deposit, and~~

~~(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.~~

~~Having found that the landlord did not comply with subsection 38(1) of the Act I further find the landlord must pay the tenant double the amount of the security deposit in the amount of $1,750.00.~~

As the tenant was successful in her application I grant an additional monetary award of $100.00 for the filing fee.

Conclusion

The landlord's application is dismissed without leave to reapply.

[The following is redacted from my Decision of April 10, 2019:]

~~I grant the tenant a monetary order in the amount of $1,850.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.~~

[The following italicized portion is added to the Decision:]

*I grant the tenant a monetary order in the amount of $975.00, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.*

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 10, 2019
Date of Correction: May 8, 2019

Residential Tenancy Branch