



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, MNDCT

### 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:

- An order for the Landlord to comply with the Act, regulation or tenancy agreement; and
- A monetary order for money owed or damage or loss under the Act, regulation or tenancy agreement.

The hearing was convened by telephone conference call and was attended by the Tenant, who provided affirmed testimony. Neither the Landlord nor an agent for the Landlord attended. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondent must be served with a copy of the Application and Notice of Hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below.

The Tenant testified that the Landlord used the rental unit address as the address for service of the Landlord on the tenancy agreement even though the Landlord does not reside there. The tenancy agreement in the documentary evidence confirms that the address used for service of the Landlord is the rental address. The Tenant stated that upon their request the Landlord provided them with a different address for service and that the Notice of Dispute Resolution Proceedings, including a copy of the Application, the Notice of Hearing, and copies of all of the documentary evidence before me for review were sent to the Landlord by registered at this subsequent address on January 4, 2020. The Tenant provided me with the registered mail tracking number and receipt and stated that the package was refused by the Landlord and returned to them. The Canada Post website confirms that the registered mail was sent as described above, refused by the recipient on January 6, 2020, and then returned to sender.

The Tenant stated that they contacted the Landlord who told them that they had moved and refused to give them an updated address for service. The Tenant submitted copies of a text message chain showing they contacted the Landlord to request an updated address, with no response from the Landlord. The Tenant stated that they were subsequently served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated January 27, 2020, and that they re-served the Notice of Dispute Resolution Proceedings package and their documentary evidence on the Landlord at the address for service listed for the Landlord on the Two Month Notice.

The Tenant stated that the wrong postal code was listed on the Two Month Notice but that they confirmed the correct postal code with the post office, the Landlord, and via the online postal code finder prior to sending the registered mail. The Tenant provided me with the registered mail tracking number and receipt, and a copy of the Two Month Notice which includes the Landlord's address for service. The Tenant stated that this item went unclaimed and was subsequently returned to them. The Canada Post website confirms that the registered mail was sent on January 29, 2020, that notices were left on January 30, 2020, and February 5, 2020, and that the item was returned to sender as unclaimed on February 20, 2020.

The Tenant stated that they attempted to personally serve the Landlord at their work but were advised by the Landlord that they had stopped working there. The Tenant stated that the Landlord then refused to give them another mailing or physical address at which to be served.

I accept the testimony and documentary evidence provided by the Tenant in relation to service of the Notice of Dispute Resolution Proceeding package and the Tenant's documentary evidence and I find this testimony and documentary evidence both reliable and compelling. I find that the Landlord intentionally attempted to avoid service by failing to provide a proper address for service on the tenancy agreement, refusing to accept the registered mail sent on January 4, 2020, and or moving without providing the Tenant with an updated address for service, by refusing to give the Tenant an updated address for service upon their request and then by deliberately failing to pick up the registered mail sent to them on January 29, 2020, at the address for service for the Landlord listed on the Two Month Notice. Residential Tenancy Policy Guideline (the "Policy Guideline") 12 states that where a document is served by registered mail, the refusal of the party to accept or pick up the registered mail, does not override the deeming provision. Where the registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

As a result, I find that the Landlord was deemed served with the Notice of Dispute Resolution Proceeding, including a copy of the Application, notice of the hearing, and all the documentary evidence before me for review in accordance with the *Act*, the Rules of Procedure, and Policy Guideline 12 on January 9, 2020, and again on February 3, 2020, five days after the registered mail packages were sent to them.

Based on the above, I proceeded with the hearing as scheduled despite the Landlord's absence pursuant to rules 7.1 and 7.3 of the Rules of Procedure and accepted all the documentary evidence before me from the Tenant for consideration. I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts, evidence, and issues in this decision.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

### Preliminary Matters

#### Issue(s) to be Decided

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

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

#### Background and Evidence

The Tenant stated that they moved into the rental unit on February 2, 2019, and that the most recent tenancy agreement was signed on November 1, 2019. The tenancy agreement in the documentary evidence before me states that the current tenancy began on November 1, 2019, that rent in the amount of \$2,000.00 is due on the 31<sup>st</sup> and that pet damage and security deposits were both paid in the amount of \$1,000.00 each.

The Tenant stated that they rent the upper unit of a house containing two rental units of relatively equal size. The Tenant stated that when the initial tenancy began in February of 2019, the Landlord required them to put the electricity for the entire premises, including the downstairs rental unit, in their name, and that the electricity remained in

their name or their partners name until last month. The Tenant stated that the Landlord advised them that the downstairs occupants' utilities were included in their rent and that a verbal agreement was reached for the Tenant to put the electricity bill in their name, pay the bill in full when it came in and have the Landlord reimburse them for whatever amount they thought was fair. The Tenant stated that they have always maintained that their portion of the electricity bill should be 20% as they already pay 70% of the gas bill and the downstairs rental unit is heated by electricity, whereas their rental unit is heated by gas. The Tenant stated that their rental unit is 1070 square feet while the downstairs rental unit is 1060 square feet and that the rental units have comparable electric appliances. The Tenant also stated that their unit is heated by forced air from a gas furnace and via a woodburning fireplace while the downstairs is heated using electric baseboard heaters, in-floor electric radiant heat, and an electric fireplace. The Tenant stated that the occupants who currently live in the lower unit also have an electric vehicle which they plug into the house electricity. The Tenant stated that the vehicle uses at least 30 kilowatt hours of electricity each day that it is charged.

The Tenant stated that despite the verbal agreement for the Landlord to reimburse them for electricity used by the occupants of the lower rental unit, the reimbursement of utilities has been an ongoing issue since the start of the tenancy.

The Tenant stated that they were not aware until very recently that the Landlord's requirement that they put the electricity for the entire premises in their name was unconscionable and that as of last month, the Landlord has put the electricity in their own name. The Tenant sought an order from the Residential Tenancy Branch (the "Branch") requiring the Landlord to comply with their verbal agreement in relation to the payment of utilities and reimbursement of amounts still owed for utilities, the cost of electricity account fees, and the cost of registered mail sent to the Landlord in relation to this hearing.

The Tenant stated that the Landlord has continually violated their verbal agreement in relation to the reimbursement of amounts paid for electricity, and that instead of paying the amounts requested, the Landlord has simply paid them random amounts. The Tenant stated that although most of what they believe they are owed has now been paid, the Landlord still owes \$140.85 towards the March 18, 2019 bill, and \$91.16 towards the May 21, 2019, bill.

The Tenant also sought reimbursement of \$30.00 spent on registered mail due to the Landlord's intentional avoidance of service and \$24.80 in electricity account fees as they believe they never should have been required to put the electricity in their name.

Further to the above, the Tenant sought an order from the Branch that their verbal agreement with the Landlord in relation to the percentage of the electricity bill that they are responsible for be honored and that they are therefore only responsible for 20% of the electricity bill.

The Tenant submitted a substantial amount of detailed documentary evidence in support of their testimony including a monetary order worksheet, a copy of the tenancy agreement, a digital evidence details sheet, proof of registered mailings, a video of an interaction with the Landlord, a detailed letter to the Landlord explain what amounts are owed to them for utilities and why, hydro usage charts, photographic evidence of an electric vehicle and hookups allegedly belonging to occupants of the other rental unit in the house, evidence of average electric usage for electric vehicles and temperatures in the area of the rental unit, information regarding the efficiency and cost of different types of heat, copies of utility bills, bank records, copies of text message conversations with the Landlord, and evidence of the size of both rental units in the house as well as the types of heating used in each unit.

### Analysis

Having carefully reviewed the uncontested and affirmed oral testimony of the Tenant and the substantial documentary evidence provided by the Tenant, I am satisfied that the upper and lower rental units of the home have similar square footage and electric appliances and that the upper unit occupied by the Tenant uses electricity only for lighting, appliances, and general household electronics. I am also satisfied that the lower unit has electric baseboard heaters, in-floor radiant heat, an electric fireplace, and an electric vehicle that is charged using the home's electricity. As a result, I am satisfied that the lower unit consumes a substantially larger portion of the home's electricity.

Although the written tenancy agreement is silent on the matter of utilities, the Tenant acknowledges that there is a verbal agreement in place for them to pay 70% of the gas bill and that they are responsible to pay a reasonable percentage of the electricity bill, which they maintain is 20%. Section 13 of the *Act* states that the Landlord must prepare the tenancy agreement in writing and that the tenancy agreement must set out which services and facilities are included in the rent.

Section 12 of the regulation states that the tenancy agreement must be written so as to be easily read and understood by a reasonable person and that the landlord must ensure that the terms of a tenancy agreement required under section 13 of the *Act* and

regulation are set out in the tenancy agreement in a manner that makes them clearly distinguishable from terms that are not required under those sections.

Although the tenancy agreement does not explicitly state that utilities are included in rent, there appears to be no written addendum to the tenancy agreement discussing the payment of utilities and given the nature of the premises and the testimony of the Tenant, there does not appear to be separate utility meters for the individual rental units. As a result, I find that it would be reasonable to conclude, under these circumstances, that rent includes utilities or that no utilities are the responsibility of the Tenant under the tenancy agreement. However, I have accepted the Tenant's testimony that there is a verbal agreement in place whereby they are responsible for 70% of the gas bill and a reasonable portion of the electricity bill. In the absence of a written agreement as to what constitutes a "reasonable" portion of the electricity bill, I accept the Tenant's calculations that 20% is reasonable under the circumstances of their tenancy and given the nature of the premises and the distribution of electrical usage between the two rental units.

As a result, I find that the verbal agreement between the Tenant and the Landlord amounts to a binding portion of the tenancy agreement wherein the Tenants are responsible for only 20% of the electricity bill and 70% of the gas bill and I order the Landlord to comply with these terms. In order for the Landlord to be reimbursed for any utilities, the Landlord must give the Tenant a copy of each bill, accompanied by a written demand to pay the appropriate portion as outlined above. Any amount not paid within 30 days of being served with the above, may be treated as unpaid rent by the Landlord for the purpose of the *Act*.

Residential Tenancy Policy Guideline 1 states that 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. It also states that if the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills. Residential Tenancy Policy Guideline 8 states that a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party and that terms that are unconscionable are not enforceable.

I find that it was grossly unfair of the Landlord to require the Tenant to put the electricity bill for the entire premises in their name, especially given the large inequity in electrical

usage between the rental units, and I therefore find that this term of the tenancy agreement was unconscionable. Although the Landlord has recently rectified this unconscionable term by putting the electrical bill in their own name, I am still satisfied that the Tenant was required to pay account fees in the amount of \$24.80 as a result of this unconscionable term. I therefore grant the Tenant's request for reimbursement of this \$24.80. I also grant the Tenant the \$30.00 sought for money spent on registered mail as I am satisfied that the Landlord left the Tenant with no reasonable option but to send several registered mail packages to them in relation to this hearing and that the Tenant therefore suffered a \$30.00 loss.

I am satisfied that the Tenant is entitled to the reimbursement of \$372.86 for electricity bills paid on behalf of the Landlord and or other occupants of the premises, for which the Landlord has yet to reimburse them. Pursuant to section 72 of the *Act*, I also grant the Tenant recovery of the \$100.00 filing fee.

As a result of the above, the Tenant is granted authority to withhold \$527.66 from a subsequent month's rent, **or** to serve and enforce the attached monetary order in the amount of \$527.66, but not both.

### Conclusion

Pursuant to section 62 (2) of the *Act*, I find that there is a verbal agreement in place between the Tenant and the Landlord that as separate utility meters and hookups are not available for each of the individual rental units on the premises, the Tenant is only responsible for 70% of the gas bill and 20% of the electric bill. Pursuant to section 62 (3) of the *Act*, I therefore Order that the Landlord keep the utilities for the entire premises in their name, or the name of an agent acting on their behalf, and comply with this agreement.

In order for the Landlord to be reimbursed by the Tenant for their utility usage, the Landlord must give the Tenant a copy of the utility bill, accompanied by a written demand to pay the appropriate portion as outlined above. Any amount not paid within 30 days of being served with the above, may be treated as unpaid rent by the Landlord for the purpose of the *Act*.

Pursuant to sections 67 and 72 of the *Act*, I find that the Tenant is entitled to compensation from the Landlord in the amount of \$527.66, which the Tenant is entitled to withhold from a subsequent month of rent.

Should the Tenant find it necessary or should they be unable to withhold the above stated amount from a future month's rent, I grant the Tenant a Monetary Order in the amount of \$527.66. The Tenant is provided with this Order in the above terms and should the Tenant wish to enforce this Order, it must be served on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. The Tenant cannot withhold \$527.66 in rent and serve this Order on the Landlord, the Tenant must choose one or the other.

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: March 31, 2020

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Residential Tenancy Branch