# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with a tenant's application for a Monetary Order to recover a portion of electricity costs paid for the residential property. The tenant's mother appeared on behalf of the tenants and the landlord appeared. The tenant's mother stated the tenants were unable to attend the hearing due to an emergency medical procedure. The tenant's mother stated the tenants were not seeking an adjournment and that she would present their case on their behalf.

I confirmed that the parties had exchanged their respective hearing documents and evidence upon each other and I admitted the materials into evidence.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions.

Issue(s) to be Decided

Have the tenants established an entitlement to the compensation from the landlord, as claimed?

Background and Evidence

The one-year fixed term tenancy started on December 1, 2018 and was set to expire on November 30, 2019 and then continue on a month to month basis upon expiry of the fixed term. The tenants were required to pay rent of $1800.00 on the first day of every month.

The tenancy agreement provides that rent included water, garbage and sewage disposal but that rent did not include electricity, heat or natural gas; and, and that “100% of utility due by [names of tenants]”.

The residential property included a three floor townhouse with each floor approximately the same size. The rental unit was the upper two floors. The lowest floor contained a basement suite.

Throughout the tenancy the tenants paid the BC Hydro (electricity) bill. There is no separate hydro meter at the residential property meaning the electricity supplied to the basement suite was included in the bill paid by the tenants.

In late October 2019 the landlord told the tenant his mother was planning on moving into the rental. The landlord did not serve the tenants with a notice to end tenancy. The landlord explained he told the tenants orally to give them a “heads up”. The following day the landlord advised the tenants that his mother would not be moving into the rental unit. The tenants responded by informing the landlord they had already decided to move to a larger accommodation with their mother.

Around this same time, the tenant also raised the issue of the hydro bill to the landlord and indicated she would take the matter to arbitration if they did come to a resolution. On October 31, 2019 the landlord informed the tenants they did not have to pay rent for November 2020. The tenants stated they would be moving out by November 15, 2019. The tenants did not pay any rent for November 2019. The tenants moved out on November 10, 2019.

The tenants filed their Application for Dispute Resolution on December 15, 2019 and requested the landlord compensate them 50% of the amounts they paid for electricity at the residential property, or $1717.43. The tenants provided a copy of the tenancy agreement and three screen shots of the BCHydro app for the subject property.

The landlord submitted that before the tenancy started he had ben advertising the rental unit for $1950.00 per month. Upon meeting the tenants, he wanted to enter into a tenancy agreement with them. The landlord had a discussion with them about them paying the electricity for the entire property and the rent was set at a lesser amount of $1800.00 and the parties specified in the tenancy agreement the tenants would pay 100% of the utilities such as electricity. The landlord further submitted that he paid the natural gas bill for the property, approximately $300.00, to fuel the pilot lights in the fireplaces in the rental unit even though the tenancy agreement provides that the

tenants were responsible for natural gas. The landlord was also of the view that seeking 50% of the electricity bill is unreasonable as the rental unit was 2/3 of the townhouse and the basement suite was only 1/3 of the townhouse. Finally, when the tenant raised the issue to him in late October 2019 he offered the tenants compensation equivalent to a month's rent, or $1800.00, and they accepted that. Therefore, the landlord is of the view the tenants have already been compensated for paying for the electricity for the basement suite and the matter was settled. The landlord provided text message exchanges to support his position.

The tenant's representative stated that the tenants understood that the term providing they would pay 100% of the electricity meant they were responsible for paying for 100% of their usage but not the basement suite usage. As for the natural gas bill, the tenants were told they would have to put the natural gas bill in their name if they wanted to use the fireplaces but they did use them so they did not put the natural gas bill in their name. The tenant's mother was of the view that the landlord's non-payment of rent for November 2019 was compensation for the landlord giving them oral notice to end tenancy so that his mother could moving into the rental unit and not as compensation for the electricity.

The landlord stated he only told the tenants his mother would be moving in as a "heads up" and not as formal notice which he then rescinded the following day. The landlord stated he is aware that he would have to give a proper notice to end the tenancy and he did not so the tenants were not entitled to a month's free rent for landlord's use of property.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The tenancy agreement provides that the tenants are to pay 100% of the utilities such as electricity and heat. The parties had a different interpretation as to what that meant by that term. The tenants believed that meant 100% of the electricity and heat they consumed would be their responsibility; whereas, the landlord was of the position he explained to the tenants it meant they were responsible for 100% of the electricity and heat for the entire property, including the basement suite occupied by other tenants.

I do not see any addendum to the tenancy agreement that would further clarify that there was a basement suite and that the tenants were agreeing to pay for the electricity and heat for the basement suite. As such, I am left with differing interpretations of the relevant term and the tenant's interpretation can be seen as a reasonable interpretation.

Where a term in a contract is ambiguous or not sufficiently clear and may be interpreted different ways, the term shall be interpreted in the least favourable way for the drafter of the contract under the legal principal *contra perferentem*. Drafting of a tenancy agreement is the responsibility of the landlord. As such, under this principle, an unclear term or ambiguous term would be interpreted against the landlord.

Also of consideration is that under section 6(3)(b) of the Act, an unclear term and and/or an unconscionable term is not enforceable. Section 3 of the Residential Tenancy Regulations provides that "unconscionable" means: For the purposes of section 6 (3) (b) of the Act *[unenforceable term]*, a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.

Residential Tenancy Branch Policy Guideline 1 provides policy statements and information with respect to various landlord and tenant obligations including payment of utilities. Below, I have reproduced a relevant portion of the policy guideline:

> **SHARED UTILITY SERVICE**
> 1. 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.
>
> 2. 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.

Based on the above, I find the term requiring the tenants to pay for the electricity of the basement suite to be unenforceable as it is not sufficiently clear and if the tenants did understand they were agreeing to pay for the basement suite electricity that term is unconscionable unless they are otherwise compensated.

The landlord was of the view that he has already compensated the tenants and they settled this matter. Compensation may be accomplished in various ways such as reducing the tenant's rent obligation, reimbursement by the landlord, or the like.

I find the landlord provided insufficient evidence that the tenant's monthly rent was reduced to reflect that the tenant would be paying the electricity for the basement suite since there was no such term recognizing this in the tenancy agreement. Nor, did the landlord provide the advertisement the tenants responded to in support of this position.

Similarly, the landlord did not record that he would pay the natural gas bill as compensation for the tenants paying the electricity for the basement suite and he acknowledged that the bills he paid were consistent with the pilot lights being left on but that the fireplaces were not used.

In light o the above, I find I am unsatisfied the tenants were compensated for the basement suite electricity usage throughout the tenancy as suggested by the landlord. However, it is undisputed that the tenants were authorized by the landlord to withhold rent for November2018, which they did. The landlord submitted that the free rent for November 2018 was compensation for the electricity they paid for the basement suite and the parties settled their disputed concerning electricity; and, I find that position has merit.

Below, I have reproduced the text messages of October 31, 2019 that were provided by the landlord:

> Landlord: [Name of tenant] please sent the paper work over, are you using civil rights tribunal for arbitration?
>
> Tenant: I have not filed yet.. was hoping to work it out
> Tenant: If you think that isn't fair. What do you think the solution should be?
>
> Landlord: Honestly I could let you not pay rent this month, and then if the place is cleaned and everything is out by the 15 I would come by and return you damage deposit.

> Tenant: OK. Sounds good. I will message you wen the house is empty and clean…most likely will be before the 15th. But will let you know

Then on November 26, 2019 the parties have another text exchange:

> Tenant: Hello [name of landlord], I am going to the arbitration office today to file for the hydro.. before I go would you like to figure it out ? If so please let me know.. I will be going to file today if not.
>
> Landlord: [Name of tenant] I am not sure what you talking about this has been resolved as per our agreement see your text messages. Sure if you would like to go ahead that's your choice but please view your text messages to me below, where you threatened 40 percent of the utilities but were compensated.

Upon review of the text message exchanges, I find the tenant's complaint and indication she was going to arbitration revolved around the electricity bills and I find the landlord's offer to settle the matter by not requiring the tenant's to pay rent for November 2019 was accepted by the tenant as compensation for the electricity dispute. I further find the messages do not indicate the tenant was seeking and accepting compensation for verbal notice that the landlord's mother was going to move in as submitted to me by the tenant's representative. Nor, did the landlord issue the tenants a 2 Month Notice to End Tenancy for Landlord's Use of Property that would entitle the tenants to compensation equivalent to a month's rent under section 51 of the Act. Therefore, I find the tenants have already been compensated by the landlord for this dispute and the parties have already settled this matter. Considering the tenants were obligated to pay rent for November 2019 in the amount of $1800.00 and the tenants claim is less than that, I am satisfied the settlement agreement was sufficient and binding. Therefore, I find the tenant are not entitled to further compensation from the landlord for this matter and I dismiss their claims against the landlord.

Conclusion

The tenant's application is dismissed in its entirety.

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: May 26, 2020

Residential Tenancy Branch