



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER HORIZON
REALTY.110 and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT, RR

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via email on May 26, 2020. Both parties also confirmed the landlord did not submit any documentary evidence. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

At the outset, discussions with both parties occurred and clarified that the tenant's application has incorrectly named the landlord. Both parties confirmed that the landlord is an individual listed on the signed tenancy agreement, G.Y.M. and not the named landlord on the application, Coldwell Banker Horizon Realty.110. Both parties confirmed that the named landlord is in fact just an agent for the owner. On this basis, the tenant's application is amended to reflect the landlord as G.Y.M.

At the conclusion of the hearing both parties confirmed the mailing address listed for each party as per the tenant's application for dispute.

Further discussions with both parties revealed that the tenant failed to file a proper amendment to the application for dispute. The tenant's initial monetary application was for \$1,100.00 which the tenant filed an amendment adding a further \$2,600.00. The tenant clarified that the tenant's monetary worksheet is for \$1,503.04 with the amendment adding \$2,600.00 for total of \$4,103.04. The tenant stated that she is limiting her monetary claim to the amended total of \$3,700.00 and not the \$4,103.04. The hearing shall proceed on this basis.

Issue(s) to be Decided

Is the tenant entitled to a monetary claim for money owed or compensation and recovery of the filing fee?

Is the tenant entitled to a reduction in rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant stated that this tenancy began on July 1, 2019 on a fixed term tenancy ending on June 30, 2020 and then thereafter on a month-to-month or another fixed term as per the copy of the unsigned tenancy agreement dated June 3, 2019. The monthly rent is \$1,900.00 payable on the 1st day of each month. A security deposit of \$950.00 and a pet damage deposit of \$950.00 were required.

The tenant provided undisputed affirmed evidence that the rental unit consist of 2 bedrooms, 2 bathrooms, a living room, a kitchen, insuite laundry and an open basement area.

The tenant seeks reimbursement of 50% of the paid electrical utilities and has submitted copies of the above noted invoices for electricity. The tenant stated that she lives in a rental property which also holds a basement rental tenant. The tenant stated that she has been paying the electrical utility for the entire house. The tenant stated that she was not made aware of this nor is it stated in her tenancy agreement. The tenant also seeks an order for the landlord to put the electrical account for the house in their name. The tenant consents to pay 50% of the electrical utilities. The tenant has submitted the invoices for the following electrical payments for a monetary claim of \$1,503.04 which consists of:

\$65.77	electricity, August 2019
\$155.85	electricity, October 2019
\$379.67	electricity, December 2019
\$484.06	electricity, February 2020
\$417.69	electricity, April 2020

The landlord disputes the tenant's claim arguing that there are two separate electrical meters for the house and that each rental has a separate meter. The tenant disputes this. The landlord stated that they do have proof of this. The landlord confirmed that no documentary evidence was submitted.

During the hearing the tenant clarified that she does not seek a rent reduction, but compensation for loss of use of the affected areas. The tenant also seeks clarification that the landlord put the utilities in their name and that the tenant would pay to the landlord 50% of the utility invoice costs.

The tenant also seeks compensation of \$2,600.00 which is equal to 50% of 3 months of rent for the period July, August and September 2020. The tenant clarified that the current monthly rent is \$1,870.00. The tenant stated that a basement flood occurred on July 4, 2020 and that the tenant has suffered the loss of use of the laundry room for 3 weeks, the loss of the basement open storage room and the garage. The tenant clarified that the landlord has had contractors in working on the plumbing which has resulted in an initial 1 week loss of use of the laundry room and the current 2 week loss of the laundry room due to the renovations. The tenant also stated that she was forced to move all her basement items into the garage and has lost the use of the basement and garage for her car. The tenant also claims that there is currently an open wall between the tenant's basement area and the basement tenant's rental unit. The tenant states that there has been a loss of privacy and noise issues because of this. The landlord disputed this claim arguing that the tenant has not suffered any loss of use of the upstairs (living and bedroom areas) of the rental. The landlord also argues that the tenant has only lost the use of the laundry for a two week period.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the tenant seeks recovery of 50% of her electrical bills paid. The tenant claimed that there is only one electrical meter and that the account is in the tenant's name. The tenant seeks recovery of 50% of the total paid electrical utilities as listed:

\$65.77	electricity, August 2019
\$155.85	electricity, October 2019
\$379.67	electricity, December 2019
\$484.06	electricity, February 2020
\$417.69	electricity, April 2020
\$1,503.04	Total
 \$751.52	 50% of Total

I find in the absence of any supported evidence by the landlord that the tenant has established a claim for overpayment of electrical utilities based upon the invoices provided. On this basis, the tenant is granted recovery of 50% of the total invoices for \$751.52.

On the tenant's claim for \$2,600.00 in compensation for the loss of use of the laundry, basement storage area and the garage, I find that the tenant has failed. A review of the tenant's monetary claim shows that 50% of 3 months of rent at \$1,870.00 equals \$2,805.00, not the \$2,600.00 filed by the tenant. The tenant confirmed that the upstairs area consists of 2 bedrooms, 2 bathrooms, a living room and a kitchen. The tenant confirmed that she lost the use of a basement storage area; the laundry area and garage due to the renovation work. The landlord has only disputed that the loss of use occurred for the laundry area for a two week period. The applicant has failed to provide sufficient evidence to equate that a loss of ½ of the rental unit has occurred. However, It is clear based upon affirmed testimony of both parties that a basement flood has occurred and that the tenant has suffered a loss of use of the garage, the basement storage areas and for a limited period of time the laundry. On this basis, I grant a nominal award to the tenant for \$600.00. This nominal award takes into consideration the loss of use of the laundry for a 3 week period; the loss of use of the garage and basement storage area for 3 months; and the inconvenience to the tenant in moving her belongings and using an outside source for laundry. The tenant provided no further

details of any expenses or costs incurred. I also find that in the event that the renovation work continues due to the basement flood preventing the tenant from the use of the garage, basement room and laundry that the tenant may withhold \$150.00 per month until the basement is properly restored. If a disputes occurs as to the completion of the basement renovations, the landlord is at liberty to apply for dispute resolution for a determination for the completion of the renovation work.

In this case, I find that as the tenant has provided sufficient evidence to support her claim that the electrical utility is in her name and the utilities are being shared on one meter with the basement tenant.

Residential Tenancy Branch, Policy Guideline #1, Shared Utility Service which states in part,

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 unconscionable⁵ 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.

A review of the submitted signed tenancy agreement states in part,

“tenants Responsible for Electrical, TV & Internet.”

On this basis, I order that the landlord immediately upon receipt of this decision to transfer the hydro electricity account to the landlord's name. The tenant is to pay to the landlord 50% of the invoice upon presentation of such.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$1,451.52.

This order must be served to the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that 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: September 28, 2020

Residential Tenancy Branch