



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, LRE, OLC

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on July 31, 2020, wherein the Tenants sought monetary compensation from the Landlord representing return of a utility deposit paid, an Order that the Tenant's contribution to shared heat and electrical utilities be reduced due to the addition of a one bedroom basement suite in the rental home, and an Order restricting the Landlord's right to enter the rental unit.

The hearing of the Tenant's Application was scheduled for 11:00 a.m. on September 8, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant's contribution to the shared heat and electrical utility be reduced?

3. Should the Landlord's right to enter the rental unit be restricted?

Background and Evidence

In support of her claim the Tenant testified as follows. She stated that the tenancy began November 1, 2018. Monthly rent is \$1,750.00. The Tenant paid a \$875.00 security deposit and a \$200.00 utility deposit. In her claim before me the Tenants sought return of the \$200.00 utility deposit.

The Tenant rents the upper floor of a home which, at the time the tenancy began included her three-bedroom unit and a two-bedroom suite in the basement. Approximately a year and a half after the tenancy began, the Landlord built an additional one-bedroom suite on the lower floor which was occupied as of August 2019.

The utilities are in the Landlord's name. When the tenancy first began, the Tenant was responsible for 65% of the heat and electrical utility as there were two adults and two children upstairs and a couple downstairs. The Tenant stated that when the one-bedroom basement suite was added to the basement the Landlord reduced their contribution to 60%. She noted that there are now five people living in the lower floor units, as opposed to the two when the tenancy began. The Tenant confirmed that the two units downstairs are self contained with their own kitchen and bathrooms. The Tenant also confirmed that they have one washer and dryer for all three suites.

In the claim before me the Tenant sought an Order pursuant to section 62 of the *Act* that their contribution to the heat and electrical utilities be reduced. The Tenant submitted that she believes the heat and electricity should either be split into thirds, or the upstairs unit pay 40% and the downstairs pay 60%.

The Tenant also requested an Order that the Landlord's right to enter the rental unit be restricted. She stated that on multiple occasions the Landlord has climbed the side of the deck to take photos of the deck.

The Landlord responded to the Tenant's claims as follows. He stated that the one-bedroom suite he added is very small, with only a bar fridge, toaster oven and microwave. He also stated that intended to have his co-workers use the one-bedroom unit to limit their commute. He claimed that by his calculation, and as a result of discussions he had with a representative at the electrical utility company, the one-bedroom unit uses 5% of the electrical utility. The Landlord also noted that the two

people in the two-bedroom downstairs are gone 10-12 hours a day. The couple in the one-bedroom unit also only have their child part time.

The Landlord further testified that the upstairs unit has a full upstairs, microwave, refrigerator, oven and stove, dishwasher, as well as another freezer or refrigerator on the deck and two air-conditioning units (which he stated were on all the time). He noted that none of the downstairs tenants have an air-conditioning unit. The Landlord also noted that the Tenant's husband and two children are home all the time.

In terms of the Tenant's concerns about him taking photos of the rental unit, the Landlord stated that when he came to the house to deal with a water leak, he could hear water leaking from the upstairs deck. He then saw the air-conditioner which was dripping water and he took a photo. He denied access the Tenant's deck to take this photo and says he did so from a distance with a zoom feature on his camera.

In terms of the "electrical utility deposit" the Landlord noted that when the Tenants first moved to the unit, they had only just come to B.C. and he was concerned about collecting from them if they moved again.

In reply, the Tenant stated that her five-year-old child was in pre-school last year and is now in kindergarten and her three-year-old is now in pre-school.

The Tenant also confirmed that they have two air-conditioning units, but she stated that they only run the air-conditioner a few months in the summer.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find as follows.

I will first address the Tenant's request for return of the electrical utility deposit of \$200.00.

Section 2 of the *Residential Tenancy Act* defines security deposit as follows:

"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property,

Further guidance can be found in *Residential Tenancy Policy Guideline 29—Security Deposit* which reads in part as follows:

[Section 17] of the Residential Tenancy Act permits a landlord to collect a security deposit. Under that Act the issue often arises as to what a landlord may collect as a deposit or payment, other than the rent, at the commencement of a residential tenancy. The Act contains a definition of “security deposit” [in section 2] , which also contains exclusions. As a result of the definition of a security deposit in the Residential Tenancy Act and the regulations, the following payments by a tenant, or monies received by a landlord, irrespective of any agreement between a landlord or a tenant would be, or form part of, a security deposit:

- The last month's rent;
- A fee for a credit report or to search the records of a credit bureau;
- A deposit for an access device, where it is the only means of access;
- Development fees in respect of a manufactured home site;
- A move-in fee in respect of a manufactured home;
- Carpet cleaning deposit or other monies paid to secure possible future expenses;
- Blank signed cheques provided as security, where the amount could exceed one half of one month's rent;
- A furniture deposit in respect of furnished premises.

[Section 19(1) of] the *Residential Tenancy Act* requires that a security deposit must not exceed one-half of one month's rent. [As such,] if one or more of the above payments, together with other monies paid, exceeds one-half of one month's rent then the remedies afforded by the Act [section 19(2) and 67] would be available to a tenant.

In the case before me the Landlord accepted a security deposit in the amount of \$875.00 and a utility deposit of \$200.00 when the rent was only \$1,750.00. The total amount of the deposits is therefore \$1,075.00, which is more than half the allowable deposit of \$875.00. Pursuant to section 19(2), the Tenant is entitled to return of the \$200.00 utility deposit paid. I therefore grant her request for recovery of these funds. I authorize the Tenant to reduce her next month's rent by **\$200.00** as recovery of the overpayment of security funds.

The Tenant also seeks an order restricting the Landlord's right to enter the rental unit. The basis of her request are photos taken by the Landlord of the exterior of the rental unit. The Tenant claims the Landlord climbed the exterior to access the balcony. The Landlord denies this and testified he took the photos from a distance with a zoom feature on his camera.

I am not satisfied, based on the evidence before me, that the Landlord entered the rental premises. I also accept the Landlord's testimony that he took the photos from

afar, to document the source of the water leak from the Tenant's air-conditioning unit. I therefore decline the Tenant's request that his right to enter the rental unit, pursuant to section 29 of the *Act* be limited.

The Tenant seeks an order reducing her contribution to the electrical utility. Section 62 of the *Act* allows me to make such orders. After consideration of the evidence before me, I find the Tenant is entitled to such relief.

The evidence confirms that when the tenancy began the Tenant, her spouse and her two children resided in the upper floor three-bedroom unit; additionally, a couple resided in the two-bedroom basement suite. The 65% share attributed to the Tenant for the electrical utility was reasonable at that time. However, when the Landlord built another one-bedroom suite in the basement, this apportionment was no longer reasonable. While the Landlord reduced the Tenant's portion to 60%, I find that to be an insufficient reduction.

The evidence before me confirms the upper unit occupies approximately the same square footage as the two basement units. Presumably, the two-bedroom basement unit was smaller, as the Landlord had the available square footage to create an additional one-bedroom unit.

The parties provided considerable testimony regarding the relative electrical usage of each tenant/rental unit. I am not persuaded this type of analysis is required, as the number of occupants, use of appliances, and time spent at home will vary with every tenant.

While this may not accurately reflect the precise electrical usage between the upper floor three-bedroom unit and the two separate units in the basement, I find that the utilities should be shared 50% between the upstairs and downstairs units. I base this on the equal square footage of each floor. The Landlord is at liberty to apportion the downstairs' units 50% contribution as necessary, hopefully with the consent of those renters, or with the assistance of the Residential Tenancy Branch on a further Application.

I therefore order as follows:

Commencing October 1, 2020, the Tenant shall be responsible for 50% of the heat and electrical utility.

Conclusion

The Tenant's request for return of the \$200.00 utility deposit is granted.

The Tenant's request for an Order restricting the Landlord's right to enter the rental unit is dismissed.

The Tenant's request for an Order reducing her contribution to the heat and electrical utility is granted. Pursuant to section 62 of the *Act* I Order that, commencing October 1, 2020, the Tenant shall pay 50% of the shared heat and electrical utility. The remaining 50% is to be paid by the downstairs renters.

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 18, 2020

Residential Tenancy Branch