# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EIGHTLAND PROPERIES INC. and
[tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MNDCL-S FFL

Introduction

The landlord applied for compensation against its former tenants for unpaid utility bills, pursuant to section 67 of the *Residential Tenancy Act* ("Act"). In addition, the landlord applied for compensation to recover the filing fee, pursuant to section 72 of the Act.

Both parties attended the hearing on March 31, 2021 and the parties were notified of Rules 6.10 and 6.11 of the *Rules of Procedure.*

Preliminary Issue 1: Service of Notice of Dispute Resolution Proceeding

In respect of the service of evidence, the tenants argued that because the landlord allegedly served them with the Notice of Dispute Resolution Proceeding package one day late that the landlord's claim therefore lacked merit (to paraphrase the tenants' position) and that they sought the return of the security deposit.

An applicant is required by the Act and the *Rules of Procedure* to serve a respondent with a Notice of Dispute Resolution Proceeding and any relevant evidence within three days of the Residential Tenancy Branch making the Notice of Dispute Resolution Proceeding available to the applicant (see Rule 3.1). In this dispute, the tenants argued that the landlord was a day late in this service; the landlord remained silent on this.

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits and in terms of when an applicant landlord is required to file an application for dispute resolution:

> Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The tenancy in this dispute ended on November 30, 2020. The landlord filed their application for dispute resolution on December 9, 2020, and the Residential Tenancy Branch did not (according to internal Branch file information) make available and send to the landlord's agent a copy of the Notice of Dispute Resolution Proceeding until December 15, 2020. According to the tenants' evidence the landlord mailed the notice by registered mail on December 16, 2020 and the tenants received the notice on December 21, 2020.

Given the above, I find that the landlord both (1) applied for dispute resolution in compliance of section 38(1) of the Act, and (2) served the tenants with the Notice of Dispute Resolution Proceeding package in compliance with the Act and the *Rules of Procedure.* Accordingly, I make no adverse findings against the landlord in respect of their right to apply for compensation against the security deposit, and I make no adverse findings against the landlord in respect of the service of the Notice of Dispute Resolution Proceeding package.

Preliminary Issue 2: Service of Evidence

On March 23, 2021 the landlord testified that they attempted to serve the tenants with additional evidence for which additional compensation in the amount of $192.00 is sought. The *Rules of Procedure* require that an applicant serve evidence no less than 14 days before the date of the hearing (see Rule 3.14). While some flexibility to the *Rules of Procedure* must be afforded, the landlord provided no persuasive argument as to why they served this additional evidence less than a week before the hearing. Further, the landlord submitted no amendment application in respect of the original claim and for this reason I am not prepared to consider this additional claim. This specific aspect of the claim is dismissed without leave to reapply.

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on December 1, 2019 and ended on November 30, 2020. Monthly rent was $2,600.00 and the tenants paid a security deposit of $1,300.00, which the landlord currently holds in trust pending the outcome of this dispute.

The tenancy agreement (a copy of which was not submitted into evidence by the landlord, but the terms of which were not in dispute by the parties) required the tenants to pay 70% of the utilities. The utilities for which the landlord seeks compensation in this dispute pertain to unpaid hydro and gas bills, and total compensation sought is in the amount of $1,552.89 (as indicated on the landlord's application; see note below).

A Monetary Order Worksheet was submitted into evidence, and it lists the following:

| | | |
|---|---|---|
| 1. | 7-month overage for unpaid hydro | $520.70 |
| 2. | Hydro bill charge | $358.90 |
| 3. | Fortis BC gas charge | $ 66.47 |
| 4. | Hydro bill charge | $220.58 |
| 5. | Fortis BC gas charge | $ 81.45 |
| 6. | Hydro bill charge | $190.40 |
| 7. | Fortis BC gas charge | $113.30 |
| 8. | Hydro bill charge | $149.47 |
| 9. | Fortis BC gas charge | $185.62 |
| 10. | Payment received | $364.00 |

The total amount indicated on the claim is $1,552.89. However, in adding items 1 through 9, and deducting the payment at line 10, the total is $1,522.89.

In support of the landlord's claim, copies of several bills were submitted into evidence. Each bill was denoted with a number corresponding to the number on the Monetary Order Worksheet.

The total amount on each bill was then reduced by 30%, and a hand-written annotation with the 70% amount of the bill owing was added. In most cases, this appears at the bottom of the bills. It should be noted that the 70% dollar amounts on each bill correspond with the amounts listed on the Monetary Order Worksheet.

The tenants argued that the actual amount they owe is $829.43, and that otherwise they have paid for many of the amounts claimed. In their written submission, they included copies of the same utility bills on which five bills there is a “PAID” stamp mark, along with a date. For example, the FortisBC bill for November 4, 2020 is stamped “PAID” and marked as such on November 9, 2020.

Analysis

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

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 26 of the Act requires that a tenant must pay rent – and rent includes any amount required to be paid for utilities – when it is due under the tenancy agreement. While no copy of the written tenancy agreement was in evidence, it was not in dispute that the tenants were required to pay 70% of the gas and electricity. Indeed, as the tenant said, “we have no problem with paying the bills,” but they dispute the amount.

At the outset, while the landlord submitted a total of eight utility bills, the copies of those same bills submitted by the tenants in their evidence paints a rather confused and contradictory accounting. The amounts indicated as owing differ between copies of the same utility bills, and, what is of particular note is that five copies of the bills submitted by the tenants are stamped with the word “PAID.”

The landlord was notably silent in respect of these aspects of the bills and provided no explanation for the differences, including any explanation as to why some of the tenants’ bills were stamped as being paid.

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 discrepancy between the bills provided into evidence by the landlord and the bills provided into evidence by the tenants raises in my mind a significant doubt that the tenants indeed owe the total amounts as claimed by the landlord.

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, while the landlord has met the onus of proving their claim for unpaid utilities, the amount claimed is the amount that the tenants have argued is the correct amount. Namely, that the total amount owing remains at $829.43.

In respect of the landlord's claim for compensation to cover the cost of the application filing fee, section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recover the cost of the filing fee.

As the landlord was successful in respect of the claim for unpaid utilities, albeit for a lesser amount, I am inclined to award the landlord $100.00 to cover the cost of the filing fee. Had the tenants paid the utilities as required under the tenancy agreement then the landlord would have ultimately not needed to proceed with an application for dispute resolution claiming for unpaid utility amounts. In summary, then, I award the landlord a grand total of $929.43.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlord may retain $929.43 of the tenants' security deposit in full satisfaction of the above-noted award.

I order the landlord to return $370.57 of the balance of the security deposit to the tenants within 15 day of receiving a copy of this decision. A monetary order for the tenants is issued to the tenants in conjunction with this decision should enforcement of the return of the balance of the security deposit be necessary.

Finally, in respect of the tenants' claim for compensation, it should be noted that the landlord filed their application in compliance with section 38 of the Act. As such, the tenants are not entitled to the doubling provision under section 38(6) of the Act.

Conclusion

I grant the landlord's application.

I authorize, and order, the landlord to retain $929.43 of the tenants' security deposit.

I order that the landlord return $370.57 of the tenants' security deposit to the tenants within fifteen days of receiving a copy of this decision. To ensure compliance with this order, the tenants are granted a monetary order in the amount of $370.57, which must be served on the landlord should it become necessary. If the landlord fails to pay the tenants the amount owed, the tenants may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: March 31, 2021

Residential Tenancy Branch