



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OLC, FF

### Introduction

A hearing was convened on December 11, 2020 in response to the Tenants' Application for Dispute Resolution, in which they applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution.

The hearing on December 11, 2020 was adjourned for reasons outlined in my interim decision of December 11, 2020. The hearing was reconvened on March 08, 2021 and was concluded on that date.

In my interim decision of December 11, 2020, the Tenant was directed to serve the Landlord with the Application for Dispute Resolution and all evidence she previously submitted to the Residential Tenancy Branch, via email. The Tenant with the initials "ML", hereinafter referred to as the Tenant, stated that she was unable to serve the documents by email, as she did not have access to a computer.

The Tenant stated that the aforementioned documents were served to the Landlord by registered mail on January 28, 2021. The Agent for the Landlord acknowledged receiving these documents and the evidence was accepted as evidence for these proceedings.

On March 06, 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant, via email, on March 06, 2021. The Agent for the Landlord stated that the evidence was not served to the Tenant in a timelier manner because she "dropped the ball". The

Tenant acknowledged stated that she received the Landlord's evidence on March 07, 2021.

The parties were advised that the Landlord's evidence would not be accepted as evidence for these proceedings, as it was not served in accordance with the Residential Tenancy Branch Rules of Procedure, which require that a respondent's evidence be received by the applicant at least seven days prior to the hearing. In these circumstances, the evidence was received the day before the hearing which, in my view, does not provide the T with sufficient time to consider the evidence.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

#### Preliminary Matter #1

During the hearing the Tenant advised that the Tenants had filed a claim for a monetary Order, in the amount of \$540.00.

The parties were advised that I could find no reference to a claim for a monetary Order.

The Agent for the Landlord stated that she understood the Landlord was claiming compensation for an overpayment of utilities, in the amount of \$390.13.

As the Agent for the Landlord understood the Tenant had made a monetary claim for \$390.13 for a utilities overpayment, I find it reasonable to consider that claim at these proceedings.

#### Preliminary Matter #2

The Tenant stated that the claim for \$390.13 was for overpayment of utilities for the period between October of 2019 and September of 2020. She stated that the remainder of the \$540.00 claim related to utility overpayments made prior to October of 2019.

The Tenant stated that the Tenants submitted no evidence of the amount due from overpayments for any period prior to October of 2019. As the Tenants did not provide such documentation and the Agent for the Landlord does not acknowledge being aware

that this claim was being made, I decline to consider a claim for overpayments made prior to October of 2019.

### Issue(s) to be Decided

What portion of the hydro bill are the Tenants obligated to pay?

Are the Tenants entitled to recover an overpayment of utility charges, in the amount of \$390.13?

### Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on November 01, 2018;
- prior to this tenancy beginning, the unit was rented by Tenant #2's former boyfriend;
- the Tenants and the Landlord signed a written tenancy agreement; and
- the tenancy agreement does not indicate that hydro is provided as a term of the tenancy agreement.

The Tenant stated that when this tenancy began the Tenants verbally agreed to pay 50% of the cost of hydro, although that agreement was not recorded on the tenancy agreement provided to the Tenants. She stated that it was her understanding that the other occupants of the residential complex would pay the other 50% of the hydro. She stated that the Tenants never agreed to pay 60% of the costs, although they did pay that percentage because the Landlord insisted that amount was due.

The tenancy agreement that was submitted in evidence by the Tenants and was accepted as evidence for these proceedings, does not declare that the Tenants will pay a portion of the hydro.

The Agent for the Landlord stated that the tenancy agreement the Landlord has on file declares that the Tenant will pay 60% of the hydro, which was the agreement during the previous tenancy. The Agent for the Landlord agrees that this information is not recorded on the Tenants' copy of the tenancy agreement.

The Agent for the Landlord stated that she suspects two copies of this tenancy agreement were created at the start of the tenancy, that one copy of the agreement was provided to the Tenants; that the parties subsequently discussed that the Tenants would have to pay 60% of the hydro; and that the subsequent agreement regarding hydro costs was added to the Landlord's copy of the tenancy agreement.

The Tenant stated that she has never seen a copy of the tenancy agreement which declares that they have to pay 60% of the hydro costs, although the Agent for the Landlord has informed her that the term exists on the Landlord's copy of the agreement.

The Agent for the Landlord stated on September 30, 2020 that the Tenants were provided with a copy of the tenancy agreement which declares that they have to pay 60% of the hydro costs.

The Tenants submitted a spreadsheet that declares the hydro charges and payments made between October 11, 2019 and September 11, 2020, which show that the Tenants have overpaid their hydro by \$390.13, presuming they are only obligated to pay 50% of their hydro costs.

The Agent for the Landlord agrees that the spreadsheet accurately reflects the hydro charges for the period between October 11, 2019 and September 11, 2020, not including late fees, and that it accurately reflects the payments made by the Tenants during that period.

### Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenants entered into a written tenancy agreement, which began on November 01, 2018. I find that the terms of this tenancy agreement replaced the terms of any previous tenancy agreement.

On the basis of the testimony of the Tenant, I find that the Tenants verbally agreed to pay at least 50% of hydro costs incurred during the tenancy. I therefore find that the Tenants are obligated to pay 50% of hydro costs incurred during the tenancy.

I find that there is insufficient evidence to establish that the Tenants agreed to pay 60% of the hydro costs during this tenancy. In reaching this conclusion I was influenced by the absence of reliable evidence that corroborates the Landlord's submission that the Tenants agreed to pay 60% of the hydro costs or that refutes the Tenants' submission that they only agreed to pay 50% of the costs.

In reaching this conclusion, I have placed no weight on the Agent for the Landlord's testimony that the tenancy agreement the Landlord has on file declares that the Tenant will pay 60% of the hydro. I placed no weight on this testimony because the Agent for the Landlord acknowledges that this term was added to the tenancy agreement after the

agreement was signed by the Tenants and after the Tenants were given a copy of it. I therefore find that there is insufficient evidence to establish that the Tenants agreed to include this as a term of their tenancy.

On the basis of the undisputed evidence in the spreadsheet submitted by the Tenants for the period between October 11, 2019 and September 11, 2020, I find that the Tenants have overpaid their hydro by \$390.13. This is based on my conclusion that they are only obligated to pay 50% of their hydro costs.

I find that the Tenants' Application for Dispute Resolution has merit and that they are entitled to recover the fee for filing this Application for Dispute Resolution.

### Conclusion

The Tenants are obligated to pay 50% of hydro costs incurred during the tenancy.

The Tenants have established a monetary claim, in the amount of \$490.13, which includes \$390.13 in hydro overpayments and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Tenants a monetary Order for the 490.13. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: March 08, 2021

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Residential Tenancy Branch