



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on May 3, 2021, in which the Landlord requested monetary compensation from the Tenant for unpaid utilities and strata fees, authority to retain her security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on September 10, 2021. 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 were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

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 Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that this tenancy began February 1, 2019. Rent was originally payable in the amount of \$2,150.00 and the Tenant paid a security deposit of \$1,075.00.

The Landlord claimed the sum of \$3,123.00 for unpaid utilities, late payment fines related to the utility and strata fines. In support, the Landlord filed an excel spreadsheet in which he set out his claim in detail.

In terms of the utility account, the Landlord claimed the Tenant received the utility bills directly from the municipality. In support of this portion of his claim the Landlord relied on section 3(b) of the residential tenancy agreement which provides as follows:

b) What is included in the rent: (Check only those that are included and provide additional information, if needed.)
The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

<input type="checkbox"/> Water	<input checked="" type="checkbox"/> Stove and Oven	<input checked="" type="checkbox"/> Window Coverings	<input checked="" type="checkbox"/> Storage
<input type="checkbox"/> Electricity	<input checked="" type="checkbox"/> Dishwasher	<input type="checkbox"/> Cablevision	<input type="checkbox"/> Garbage Collection
<input checked="" type="checkbox"/> Heat	<input checked="" type="checkbox"/> Refrigerator	<input checked="" type="checkbox"/> Laundry (free)	<input type="checkbox"/> Parking for 2 vehicle(s)
<input type="checkbox"/> Furniture	<input checked="" type="checkbox"/> Carpets	<input type="checkbox"/> Sheets and Towels	<input type="checkbox"/> Other:
<input type="checkbox"/> Additional Information: This price does not include utility fees.			

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[reproduced as it appears on the tenancy agreement]

The Landlord also testified that he brought the unpaid utility accounts to the Tenant's attention repeatedly, including during previous arbitrations, and that the Tenant was fully aware that she was responsible for this account yet failed to pay.

In response to the Landlord's claims the Tenant's son in law testified as follows. He confirmed that it is the Tenant's position that the smoking fine was dealt with in a

previous arbitration; the file number for those matters is included on the unpublished cover page of this my Decision.

In terms of the Landlord's claim for unpaid utilities, S.L. submitted that the Tenant received the utility accounts in her own name, and she paid them. In terms of the additional *municipal* utility accounts, the Tenant stated that she was never informed that she was to pay this account, nor did she ever receive the bills. She further stated that at no time did the Landlord ask her to pay the municipal utility accounts.

In reply, the Landlord stated that the municipal utility was sent to the rental unit. He stated that while the account was in his name as the property owner, it was sent to the rental property. In support of his claim, he submitted a disconnection notice which was sent to him personally, but at a different address.

Analysis

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

The Landlord seeks monetary compensation for the cost of municipal utility accounts related to the rental unit which he says the Tenant failed to pay.

A tenant may be responsible for paying for utilities in addition to rent, provided this is clearly set forth in the tenancy agreement. A tenancy may also be ended for unpaid utilities pursuant to section 46(6) which reads as follows

46 (6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

In this case, the tenancy agreement did not specify the Tenant was to pay the municipal water utility, rather the tenancy agreement simply referenced "utility fees". The Tenant submits that she understood this to mean she was responsible for the electrical utility, which she received and paid. She denied receiving the municipal water utility account. The Landlord says he told the Tenant that the "utility fees" related to the municipal water

utility. He conceded these accounts were in his personal name, but sent to the rental unit address.

Contra proferentem is the legal principle which provides that where there is ambiguity in a contract the contract should be interpreted in favour of the party who did not draft the contract. In this case, the Landlord drafted the residential tenancy agreement (contract) and as such an ambiguity should be interpreted in favour of the Tenant.

I find that the inclusion of “utility fees” created ambiguity in the tenancy agreement as it was not clear the Landlord intended this to mean the municipal water utility. Had that been his intention, it was his responsibility to ensure it was clear on the tenancy agreement. In this case the rental agreement provided that the Tenant was responsible for the “utility fees”; there were no further details as to what utility this referred. I find the reference to “utility fee” to be ambiguous. I am not persuaded that the account referenced the water utility as argued by the Landlord.

Further, I note that municipal utility accounts are routinely sent to the property owner at the residential address, and that while the account may have gone to the rental unit, it would have been unreasonable for the Tenant to open mail addressed to the Landlord. In any event, I was not provided evidence of such mail, rather the only document from the municipality was the disconnection notice which was in fact sent to the Landlord at an address *different* from the rental unit. This supports a finding that the municipal water utility accounts were not sent to the rental unit as claimed by the Landlord.

Finally, it is notable that the Landlord also failed to submit any evidence to support a finding that he made a *written demand* for the Tenant to pay this account as provided for in section 46(6)(b). Had this account remained outstanding for some time, presumably the Landlord would have requested payment from the Tenant in writing; I was not provided any documentary evidence to suggest this occurred.

In all the circumstances, I find the Landlord has failed to meet the burden of proving that the Tenant should be responsible for the municipal utility account. **I therefore dismiss his claim in this regard.**

The Landlord also sought compensation for the \$200.00 paid for a fine levied by the strata due to the Tenant smoking. The Tenant claimed that issue was dealt with in prior arbitrations. I have reviewed the Decision rendered in both the aforementioned files/arbitrations and see no reference to this fine in the Decisions rendered. While the

parties may have discussed this fine before or during the prior proceedings, there appears to have been no ruling as to the payment of the fine.

I accept the Landlord's testimony that this fine was levied by the strata due to the Tenant smoking and that he paid this fine. I therefore find the sum to be recoverable from the Tenant and I award the Landlord **\$200.00** in compensation.

Having been partially successful in his claim, I award the Landlord the sum of \$100.00 for the filing fee for a total award of **\$300.00**. Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain \$300.00 from the Tenant's \$1,075.00 security deposit. The balance of these funds must be returned to the Tenant. To this end I grant the Tenant a Monetary Order in the amount of **\$775.00**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court.

Conclusion

The Landlord's claim for compensation relating to the municipal utility account is dismissed without leave to reapply.

The Landlord's claim for compensation for the \$200.00 strata fee is granted.

The Landlord's claim for recovery of the filing fee is granted.

The Landlord may retain \$300.00 from the Tenant's security deposit. The balance of **\$775.00** is to be returned to the Tenant.

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: October 7, 2021

Residential Tenancy Branch