



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Tenant: CNL, OLC, MNDCT, RP, RR, LRE, PSF
For the Landlord: MNDCL, FFL

Introduction

The Tenant filed an Application for Dispute Resolution on January 20, 2022 seeking:

- to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice");
- compensation for monetary loss
- reduction in rent for repairs not provided
- repairs to the rental unit after requesting in writing
- suspension/set conditions on the Landlord's right to enter
- provision of services/facilities required by the agreement or law
- the Landlord's compliance with the legislation and/or the tenancy agreement.

The Landlord filed an Application in response to this on March 14, 2022. They seek compensation for monetary loss, and recovery of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on April 21, 2022. At the outset of the hearing, both parties confirmed they received the prepared documentary material of the other.

Preliminary Matter – Two-Month Notice to End Tenancy

Regarding the end of tenancy, the Landlord issued the Two-Month Notice to the Tenant on January 10, 2022, giving the move-out date of March 31, 2022. In the hearing the tenant provided that they were going to move out from the rental unit on May 1, 2022. They stated

their commitment to having the rental unit cleaned and ready for its return to the Landlord. The Landlord accepted this end-of-tenancy date. In line with this, and to ensure compliance with the May 1 end-of-tenancy date, I grant an Order of Possession to the Landlord for that date, as a measure of surety to the Landlord in this matter.

Given that the Tenant provided affirmed testimony that they will be moving out on May 1, 2022, the validity of the Two-Month Notice is not in issue. For this reason, I dismiss the Tenant's Application to cancel the Two-Month Notice. Because the Tenant stated their move-out was because of the Two-Month Notice, I grant they are entitled to receive from the Landlord an amount that is the equivalent of one month's rent payable under the tenancy agreement. I order the Tenant may withhold the final month's [i.e., April 2022] rent.

Given that the Tenant will end very soon, there is no need for a decision on repairs, the Landlord's right to enter, provision of services/facilities, and the Landlord's compliance with the *Act* and/or the tenancy agreement. I dismiss each of these issues, without leave to reapply.

Preliminary Matter – Tenant monetary compensation

On their Application, the Tenant applied for compensation in the amount of \$21,000 for monetary loss. Alternately, they requested a rent reduction of 10%, chiefly because of issues with sound between the two adjacent units.

In the hearing, the Tenant and their advocate assisting them stated they were not pursuing this piece of their Application. I find the Tenant provided the request for rent reduction in the alternative to their monetary claim, with that same amount of \$21,000 indicated in that space on the Application.

Because of the Tenant's statement withdrawing this piece of their Application, I dismiss these two issues, without leave to reapply.

Issues to be Decided

Is the Landlord entitled to compensation for money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 67 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in their evidence. The parties signed the agreement on April 19, 2021 for the tenancy existing on a month-to-month basis going forward from May 1, 2021. The rent amount was set at \$1,750, and the Tenant paid a security deposit of \$875 and a pet damage deposit of \$875.

The agreement contains an addendum wherein it is stated: "The tenant agrees to pay 40% of the Hydro and Gas bills." Each of the two tenants initialled that page, showing they read and understood that piece. The Tenant acknowledged this piece of the addendum when reviewed specifically in the hearing.

The Landlord provided a comprehensive account of the bills they present are owing from May 2021 through to February 2022. This is comprised of gas bills owing for each month, reduced to the 40% amount for each, totalling \$229.10. On April 4 the Landlord amended their claim, adding \$62.63 to the gas bill for February 2022, bringing the total to \$291.73.

In the hearing, the Landlord presented an additional gas bill amount for \$38.08 which is the March 2022 billed amount. Adding this to the gas bill total brings the amount to \$329.81. The Landlord stated they forwarded this to the Tenant by email on April 19, 2021, which is two days before the hearing.

The remaining Hydro bill is for the billing period from November 4, 2021 through to January 4, 2022 for the amount of \$474.80. They added \$425.33 for the Hydro for January-February 2022, bringing the Hydro total to \$910.13.

The Landlord presented copies of all invoices from the utility providers showing the base amounts from their 40% claims are taken. They also provided copies of their messages to the Tenant concerning invoiced amounts, from March 15 and March 29.

In the hearing the Tenant addressed the matter of utilities to state they paid bills up until December 2021. They never discussed invoices for utilities with the Landlord during the time of this tenancy. They sought out information from the Hydro utility provider; however, they received three different quotes on usage amounts and invoices. They also submitted the Hydro usage as shown on the invoice for November – January is "shockingly high", and when checking with the utility provider found it to be five times normal usage. The provider publishes what average usage is purported to be, and the Tenant's comparison to what the Landlord presents here proves their point that these amounts are quite high. This is due to the

machinery being used in the upper unit above their own where the Landlord takes up residence. According to the Tenant, the utility provider advised them “not to pay it.”

In response to this, the Landlord stated the Tenant provided no evidence of average usage amounts from the utility provider.

Additionally, the Tenant submitted they were never presented with gas bills until they received the notice of this hearing from the Landlord along with their evidence.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Here I find the Landlord provided clear proof of the utility amounts owing, with the one exception of the most recent gas bill of \$38.08. That is a matter of accounting the parties will have to settle when the tenancy ends on May 1, 2022. Though the Landlord states they notified the Tenant of this amount on April 19, two days prior to the hearing, they did not provide proof of that for me to establish the actual value of that amount. This leaves the actual gas utility amount in question to be \$291.73.

It is not known why the Landlord did not present gas bills to the Tenant at all throughout 2021. I find the Tenant’s point on this is valid in this scenario; this is borne out by the Landlord presenting the entirety of this account for the first time to the Tenant in March 2022. This is a matter of accounting and clearing up old accounts; however, I find the pretext for a tenancy agreement is a monthly arrangement and where utility amounts are concerned, the Landlord

did not stay on top of the account to mitigate any loss that may occur. I place responsibility for no gas utility payments with the Landlord who did not notify the Tenant in a timely fashion. Such as they present it here, the final amount in question -- \$291.73 -- is roughly ten times the monthly amount that would normally be paid by the Tenant monthly when loosely approximating a monthly average. I can't perceive any dishonest motive from the Landlord for not presenting gas amounts owing at all since the start of the tenancy; however, the responsibility for this larger accumulated amount rests with the Landlord for not presenting this regularly to the Tenant.

I find the Landlord did not mitigate their damage or loss here and for this reason I find there is no amount of gas utility to be paid by the Tenant, for the period from May 2021 through to December 2021. I find the Landlord more reasonably can expect payment for utility amounts accruing within the more recent two months, based on more timely notification of these amounts to the Tenant. I grant the utility amount as they exist in the record for January – February 2022 is owing to the Landlord. This amount is \$86.63.

The Tenant responded to the Landlord's Hydro amounts, as presented, as "shockingly high". They cited their queries to the utility provider who told them the amount was higher than average. They attribute this to the excessive machine use by the Landlord upstairs. Though the Tenant provided no hard data, I give credence to their account where the previous bill is noted on the November – January Hydro bill. That amount (\$527.69) is roughly 50% of the charges in the November-January billing period (\$1,192.72). I find the increased consumption trend continues through to the following billing period (\$1,088.33).

I give weight to the Tenant's testimony and find the increase in usage charges is more likely than not attributable to the Landlord, as opposed to any changes in lifestyle from the Tenant. This appears to be an inordinate amount of utility consumption, with a sudden increase from one billing period through to the next two. I find the prior billing period is more likely than not an indication of normal usage; therefore, given the consumption increased by 50% through to the following month, I award the Landlord 50% of their claimed amount, to \$455.07.

I find the Landlord was successful in this claim; therefore, I grant the return of the Application filing fee to them. This amount is \$100. This is \$641.70 in total for their claim.

Conclusion

For the reasons above, I grant an Order of Possession to the Landlord effective 12:00 p.m. on May 1, 2022. When needed, the Landlord must serve this Order of Possession on the Tenant.

Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order \$641.70 for the recovery of the utility amounts so indicated above, and a portion of the Application filing fee. I provide the Landlord with this Order in the above terms, and they must serve it to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: April 22, 2022

Residential Tenancy Branch