



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, FFT

### Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- an order for the Landlord to make repairs to the rental unit pursuant to section 32; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord's agent GR, one of the Tenants, EA, and the Tenants' advocate and interpreter KA attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

All attendees at the hearing were advised the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings. They confirmed that they were not recording this dispute resolution hearing.

### Preliminary Matter – Addition of Party

EA confirmed his spouse AN is also a tenant on the tenancy agreement. EA confirmed he was attending the hearing on his own behalf and as agent for AN. Accordingly, I added AN as a party to this application, pursuant to Rule 7.13 of the Rules of Procedure.

Preliminary Matter – Service of Dispute Resolution Documents

EA and KA testified that the notice of dispute resolution proceeding package and the Tenants' documentary evidence were sent to the Landlord via registered mail. During the hearing, EA and KA advised that the tracking number was RN483562311CA. However, it appears that I was given the wrong tracking number. The tracking results show that this package was sent on February 15, 2022 and delivered on February 16, 2022. Records indicate the Residential Tenancy Branch made the notice of dispute resolution proceeding package available on March 3, 2022, with instructions for EA to serve the package on the Landlord by March 6, 2022. Therefore, it would not have been possible for the Tenants to send the notice of dispute resolution proceeding package on February 15, 2022.

GR testified the property manager responsible for handling this application, JG, became sick a few days before the hearing and could not attend. GR confirmed he is the building manager, but stated that he is unfamiliar with this case. GR testified he was given a copy of the notice of dispute resolution proceeding by head office. I note that GR is the person named as the Landlord's representative on the application.

I asked GR whether he wished to seek an adjournment in the circumstances. GR declined to seek an adjournment and stated that he did not think it would make any difference.

EA and KA testified the Tenants did not receive any documentary evidence from the Landlord for this application. The Landlord relied on oral testimony from GR for this hearing.

Given that GR attended this hearing and confirmed an adjournment was not required, I find the Landlord was sufficiently served with the Tenants' notice of dispute resolution proceeding package and documentary evidence, in accordance with section 71(2)(c) of the Act.

Issues to be Decided

1. Are the Tenants entitled to an order for the Landlord to repair the rental unit?
2. Are the Tenants entitled to recovery of their filing fee?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The Tenants submitted a copy of the tenancy agreement into evidence. The tenancy commenced on September 14, 2021 for a fixed term ending on September 30, 2022, and is to continue thereafter on a month-to-month basis. Rent is \$2,950.00 excluding utilities, due on the first day of each month. The Tenants paid a security deposit of \$1,475.00 which is held by the Landlord.

KA testified the Tenants made this application to request an order that the Landlord investigate a potential problem with the electrical system and meters in the rental building.

The rental unit is part of a rental building wholly owned by the Landlord. The Landlord uses a third-party company, Wyse Meter Solutions Inc. ("Wyse"), to provide sub-metering services and to issue the tenants' electricity bills.

KA testified that the Tenants' bills from Wyse for the months of October to December 2021 were approximately \$90.00 per month. However, in January and February 2022, the Tenants' bills jumped to \$597.23 and \$470.83 respectively. KA testified that usage in January 2022 was recorded at 697.50 kWh plus 3,520.11 kWh for a total of 4,217.61 kWh. February 2022 usage was recorded at 697.50 kWh plus 2,665.15 kWh for a total of 3,362.65 kWh. The Tenants submitted copies of their January and February 2022 bills in support. An "Electrical History Usage" chart included in the Tenants' February 2022 bill appears to show that usage for the months of October to December 2021 were much lower, followed by a significant jump in January and February 2022.

KA argued that it is not possible for the Tenants to have used that much electricity. The evidence suggests that the rental unit is a 2-bedroom suite. KA testified that the only appliances using electricity in the rental unit are the fridge, stove, and dishwasher. KA stated that the rental unit does not have a washer or dryer. KA stated that the heating system is not working properly and there is no air conditioning. KA also stated that the Tenants have tried to keep all appliances other than the fridge turned off, but only saw a reduction of approximately \$50.00. KA confirmed that recent bills are lower,

approximately \$230.00 per month, but that the Tenants believe they are higher than they should be.

KA testified the Tenants have asked Wyse to investigate the issue. The Tenants were told by Wyse that the Landlord had asked for the usage to be averaged. The Tenants submitted a screenshot of Wyse's response, which indicates that the Tenants would need to pay a minimum \$300.00 charge if Wyse's technician determines there is nothing wrong with the meter.

KA explained the Tenants spoke with other tenants in the rental building, and learned that tenants who moved into the building prior to 2019 have the cost of their electricity included in the rent. KA testified that there are newer tenants who experienced similar problems with high electricity bills. The Tenants submitted a copy of a letter to the Landlord regarding the high electricity bills with a request to have the building's electrical system checked. This letter is signed by tenants in four different units.

KA stated that the Landlord has not responded to the Tenants' request and has not allowed the Tenants to see the meters. KA stated that he doesn't believe the building has one meter per unit, and that it is possible for multiple units to be on a single meter.

KA stated it is suspected that the newer tenants are subsidizing the cost of electricity for older tenants in the building. There is also concern that the usage billed to the Tenants may include electricity consumption for the building's common areas, such as the communal laundry space.

In response, GR testified he didn't have the key to access the electricity meters. GR stated the property manager who couldn't attend this hearing, JG, has a spreadsheet for each unit that tracks electricity usage. GR stated JG confirmed these records with Wyse in February or March 2022.

GR explained that Wyse uses a black box which does not show digital readings and that it is a closed loop system. GR testified the black box feeds into a circuit breaker, in a way that he cannot see separate meters for each unit. GR acknowledged he does not know whether the individual units are separately metered. GR stated he does not have a way to access Wyse's technology.

GR acknowledged that there have been different tenants complaining about this issue.

GR testified the rental building is an old building that is not energy efficient. GR explained the units have radiant ceilings and 8-foot single pane windows.

GR confirmed the building has 17 floors and more than 100 units.

### Analysis

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.

#### *1. Are the Tenants entitled to an order for the Landlord to repair the rental unit?*

Section 32(1) of the Act states:

#### **Landlord and tenant obligations to repair and maintain**

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I am satisfied based on the Tenants' testimony and evidence, that there is a potential issue with the electrical system and/or electrical meter(s) in the rental building worthy of investigation. I have considered whether the significant increases experienced by the Tenants in January and February 2022 were due to Wyse's statement that previous bills had been charged based on average rather than actual usage. However, I find there is insufficient evidence to support this statement. The Electrical History Usage chart included in the Tenants' bills appears to show that actual usage for the months of October to December 2021 were simply much lower than usage in January and February 2022. This chart also indicates that the recorded usage was different for the months of November and December 2021. I find the evidence does not suggest that the Tenants were being charged a flat fee for their usage from October to December 2021. Furthermore, the February 2022 bill suggests that the Tenants consumed 3,362.65 kWh of electricity since their January 2022 bill. I find, on a preliminary basis, that this figure seems excessive for what should be one month's worth of electricity for a 2-bedroom unit, even though it is in an older building.

In addition, I find that the Landlord has an obligation to ensure that the building's electrical system and electrical meter(s) are in a state of decoration and repair that comply with the health, safety, and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I also find it would be unconscionable for the Tenants to pay for any electricity consumption not directly associated with the rental unit. Therefore, I conclude that the Landlord has a duty in this case to investigate the Tenants' concerns.

*2. Are the Tenants entitled to recovery of their filing fee?*

As the Tenants have been successful in this application, I award the Tenants reimbursement of their filing fee pursuant to section 72(1) of the Act.

Pursuant to section 72(2)(a) of the Act, I authorize the Tenants to deduct \$100.00 from rent payable to the Landlord for the month of either July 2022 or August 2022, at the Tenants' choosing.

Conclusion

I am satisfied that the Landlord has a duty to investigate the Tenants' concerns with the rental building's electrical system and meter(s), as part of the Landlord's obligation to maintain the residential property under section 32 of the Act.

I order that the Landlord do the following **on or before Monday, August 15, 2022**:

1. The Landlord shall have a technician from Wyse attend at the rental building and complete an inspection of the building's electrical system and electrical meter(s), at the Landlord's cost.
2. The Landlord shall obtain a written report from the Wyse technician who conducts the inspection, at the Landlord's cost, and provide a copy of this report to the Tenants.
3. If it is determined that the building's electrical system and/or electrical meter(s) require repair, the Landlord shall have such repair completed at its cost.

As reimbursement for their filing fee, the Tenants are authorized to deduct \$100.00 from rent payable to the Landlord for the month of either July 2022 or August 2022, at the Tenants' choosing.

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: June 29, 2022

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Residential Tenancy Branch