



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

Page: 1

## **DECISION**

Dispute Codes: MNRL-S, MNDCL-S, FFL

### **Introduction**

The landlord seeks compensation against his former tenants, pursuant to sections 67 and 72 of the Residential Tenancy Act (“Act”).

An application for dispute resolution was made on May 12, 2021. A dispute resolution hearing was first held November 9, 2021 and adjourned (for reasons explained in the Interim Decision) to a second hearing on June 14, 2022. At the latest hearing the parties were affirmed, no service issues were raised, and Rule 6.11 of the Residential Tenancy Branch’s *Rules of Procedure* was explained. The service issues that brought about the previous adjournment had been resolved.

### **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 lasted from April 15, 2019 until May 1, 2021. Monthly rent was \$4,500.00. The tenants paid a \$200.00 pet damage deposit which was returned after the tenancy. The tenants also paid a \$2,250.00 security deposit which the landlord holds in trust pending the outcome of this decision. There are multiple pages of a written tenancy agreement and an addendum, including a modified addendum.

The landlord’s claim (as stated in his application) is for \$3,935.93, which includes a claim of \$100.00 for the application filing fee. The claim of \$3,835.93 was corrected during the hearing when the landlord’s advocate (or agent) noted that the landlord

seeks to retain the \$2,250.00 security deposit to pay for unpaid utilities and seeks an additional \$1,407.18 in compensation. The latter amount was reduced from the \$1,585.93 as quoted in the application. The particulars of the claim are, as stated in the application, as follows (relevant excerpts only):

During the 2 year lease, the tenant missed a number of electrical payments, and never paid her water bill. The lease sets out the terms and conditions under which the tenant pays a portion of the water bill and a portion of the electrical bill. The tenant missed a number of months of electrical payments and paid wrong amounts on other months. [ . . . ] The total amount of the damage deposit does not cover the unpaid utilities. The balance (\$1585.93) will still be outstanding.

The landlord's advocate provided testimony and made submissions regarding the amount owed. For the sake of clarity, I reproduce most, but not all, of the written submission provided by the landlord (names redacted for privacy):

The Tenant entered in an agreement to lease (Tab 6 )

As set out in the lease Addendum there would be a shared utilities billing (Tabs 7 and 8)

Tenant in the main part of the house would pay the Fortis gas bill but would receive a credit monthly in the amount of \$50.00 to reflect that the tenant in the Basement suite would be using some of the gas for heat and for cooking.

Tenant in the main part of the house would pay a share of the Fortis Electricity set at half of the monthly billed amount to reflect the fact that she was renting a little more than half of the total rentable space, Landlord would pay half of the monthly bill and collect a part of it back from the suite.

NOTE: Main house rental area 2,042 sq. ft. 62% of total plus 5 acres

Basement suite rental area 558 sq. ft. 17% of total

Carriage house rentable area 700 sq ft 21% of total

2) In May the tenant in the basement suite (herein after *the Suite*) gave notice and as per the lease, the landlord offered the space to the tenant in the main house as requested in the addendum Tab 7.

The tenant in the suite had been paying \$1,200 with the landlord paying the hydro, and \$50 of the gas bill. (Tabs 5 and 6)

The Landlord agreed to a reduced rent to consolidate the suite and main house reducing oversight and complexity. To reflect the fact that the Main house tenant

would now be paying all the gas and controlling 79% of the total livable area on the property and be responsible for the entire house, the Landlord agreed to a rent of \$4500. (Tab 6 p2 and Tabs 7 & 8)

Note: The landlord attempted to get the tenant to meet and make the appropriate changes to the lease to reflect the change in tenancy, however the tenant was abusive in telling him that she would not sign the changes, as she was happy with the way it was. The landlord tried on several occasions to get a clear agreement with the tenant but eventually stopped out of frustration and we are in our second RTB hearing as a result.

3) Repeated notices were served to try to get the tenant to pay the correct amount of the Hydro Bill, (Tabs 9-12). Finally in late 2020 the tenant agreed that they had been paying an incorrect amount and agreed to pay the amount billed by BC Hydro with an \$80.00 deduction to represent the amount of electricity used by the Carriage house. The Tenant has not followed through on paying the correct amount and a significant amount has accrued. In the spreadsheet attached, (Tabs 13 and 14). The actual usage charges are shown as well as the equalized payments as per the BC Hydro Equal payment plan adjusted as electrical consumption increased or decreased.

In the year prior to renting out the house the Landlord had lived alone in the main house, with a tenant in the suite in addition there was a tenant in the carriage house. The electrical consumption charges rose early in the tenancy (Tabs 28 to 32) and remained elevated throughout the occupancy of the house with up to 4 or 5 people living there ([the tenants], the tenants father, and the tenants younger son)

4) The different versions of the lease addendums have been included under Tab 7 & 8 although they do have some poorly worded and edited content it is sufficiently clear that [the tenant] was to pay half the Hydro bill in the first iteration of the lease which applied to the Month of May in 2019, after which she was to pay the monthly bill less an \$80.00 credit which the Landlord provided to cover the potential power bill from the Carriage suite which is heated by gas and has a gas hot water tank.

5) The original lease and subsequent versions require the Landlord to pay the water services to the main house, the suite, and the Carriage house while the Tenant in the main house was to pay for the water to irrigate the approximate 4 acres of grazing for her three horses.

The water services to the main house are based on a flat rate, water enters by the driveway

The water services to the detached garage and carriage house are also is paid by the landlord as a flat rate, this was increased during the term of the lease Tab 17 column 6

The water services to the agricultural land (herein the Ag water) are on a separate line entering the property at the bottom of the property directly into the grazing land.

The billing for the Ag water changed during the term of the lease, starting as a flat rate per quarter (2<sup>nd</sup> quarter of 2019) plus a fall line shutoff and a spring line opening.

See spreadsheet at TAB 15 column F for details

From April 2019 to April 2020 the Ag water was charged at a flat fee, but as of the June 2020 2<sup>nd</sup> quarter billing (Tab 23) the water rate class was changed due to a ruling that the property no longer met the requirements for Ag water rates which are designated for ALR properties generating income from Agricultural uses of the land.

As of the second quarter of 2020, the city designated the water line servicing the 22-zone irrigation system as Residential Mtr Wtr (residential metered water) thereby raising the rate to regular residential rates instead of the highly discounted AG water rates. This resulted in a substantial increase in water rates for watering the grazing land servicing the horses. Copies of West Kelowna utility billing the quarters in question is found at tabs 18 through 26 organised by quarter.

Details of rates and payments are set out in a printout of the West Kelowna Utility billing records under Tab 17

Relief sought by the Landlord from the held Deposit of \$2250.00

After 2 years of constantly late utility payments and struggles to get paid the proper amounts the landlord is looking for a monetary order for payment of the utilities owed; specifically \$1694.54 for the outstanding Hydro billing which was paid by the Landlord on behalf of the Tenant.

In addition to the Hydro, the Landlord would like a monetary order for payment of the outstanding water utility bills which were not paid in 2019 or 2020 despite regular requests for payment, that amount outstanding is \$2,186.95 minus a partial payment received March 15<sup>th</sup> 2021 of \$779.77 leaving a net owing of \$1,407.18

The tenant disputes the entirety of the landlord's claim, and in fact argues that they overpaid. The tenant argues that they only owed \$4,573.03 over the period in question but that they ended up paying \$5,194.61, thus are owed \$621.58 by the landlord.

There is, as noted, multiple pages of the tenancy agreement and addenda in evidence. The first addendum is undated but appears to have been attached to the first tenancy agreement, which was signed and executed on March 17, 2019. Three terms of the addendum are of relevance in this dispute, and are reproduced as follows:

- ALR  $\frac{1}{4}$  water bills are also the responsibility of [tenant D.S.].
- Electricity is average monthly at \$327. This bill will be split with Landlord [L.Y.] and tenant [D.S.]. Tenant's portion will be added to rent. See calculations.
  - o This bill will remain in [L.Y.]'s name with the tenant [D.S.]'s name also for access to view.
- The FORTIS gas bill will be [tenant D.S.]'s responsibility, with the Landlord [L.Y.] crediting \$50 for the tenant in suite B's use; for gas stove and water. See calculations.

There is below these terms a calculation of total rent comprising \$3,500.00 for rent, minus \$50.00 for a Fortis credit, plus \$167.50 for power (though a few sentences earlier it states \$164.50) for a total of \$3,617.50.

Also submitted is a copy of, according to tenant's counsel, a unilaterally attempted amendment of the addendum. There are much handwritten notations, lines drawn through various portions of the addendum, and so forth. The "amendments" were made to the previously signed addendum. Notably, the " $\frac{1}{4}$ " fraction that appears next to the ALR water bill term is scratched out. There are lines crossed through the words "split with Landlord [L.Y.]" and further lines crossed through the words "Tenant's portion will be added to rent. See calculations." There is also the crossing off the words "\$50 for the tenant in suite B's use;". Following this, the landlord has drawn lines through various other sentences and phrases, including crossing off the rent of \$3500 and writing \$4500 next to the previous amount.

The tenant never agreed to the changes to the tenancy agreement's addendum.

### 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.

In this dispute, the landlord is attempting to claim compensation based on changes he decided to unilaterally make to the tenancy agreement's addendum, which constitutes part of the tenancy agreement.

Sections 14(1) and 14(2) of the Act state the following:

- (1) A tenancy agreement may not be amended to change or remove a standard term.
- (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

Based on the facts before me, the landlord did not have the legal right or consent of the tenants to add, remove, or change either the standard terms or other terms as he tried to do. While the landlord seems to have gotten himself into a legal pickle, especially regarding the changes that came about with respect to West Kelowna's decision on agricultural water use and billing, this cannot be remedied by simply changing the terms of the tenancy agreement. It is a landlord's responsibility to carefully draft the terms of a tenancy agreement and any addendum before having a tenant agree to those terms.

Based on this fact, I am unable to find that the landlord has proven that the tenant owes additional monies for unpaid utilities. Further, I am unable to find, on a balance of probabilities, that the landlord has proven the amounts allegedly not paid by the tenant. Quite frankly, the landlord's evidence does not support the arguments made that the tenant has not paid the utilities.

In respect of the hydro, the tenancy agreement states that the electricity is an average of \$327.00 monthly. However, a tenant would have no way to know what the below or above-average hydro would be, and thus this is an uncertain term of the tenancy agreement. A vague term of a contract cannot be held to be enforceable, and thus it is my finding that the tenant has, according to the payment records provided into evidence, paid what she owed during the tenancy.

Taking into consideration all the evidence before me, it is my finding that the landlord has not proven, on a balance of probabilities, that they are entitled to compensation as claimed. For these reasons, the landlord's application is dismissed in its entirety, without leave to reapply.

The landlord is ordered to return the tenant's \$2,250.00 security deposit to the tenant (or to the tenant through her legal counsel) within 15 days of receiving a copy of this decision. As explained to tenant's counsel during the hearing, the tenant is at liberty to make an application for dispute resolution if any additional compensation is sought.

### Conclusion

The application is dismissed without leave to reapply.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: June 15, 2022

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Residential Tenancy Branch