



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VISTA REALTY LTD
and [tenant name sussed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenant applied on February 16, 2022 for:

- compensation for monetary loss or other money owed; and
- the filing fee.

The hearing was attended by the tenant, the owner/landlord (“the landlord”), and a representative (WT) from the realty company named as a respondent, who were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The parties confirmed receipt of each other’s hearing materials.

Preliminary Matter

WT requested the realty company be removed as a respondent, stating that the landlord and the tenant had been dealing with each other directly regarding the hydro and gas, and that the company had no involvement in that. WT testified that the landlord has terminated the management agreement with the realty company.

The tenant submitted that he named the realty company in the dispute because it had been the rental agency.

I advised those present that I would consider the request, addressing it in my written decision. I advised WT that he may disconnect from the hearing if he wished, or, I would hear his testimony on the tenant’s claim; WT chose to disconnect from the hearing.

Having considered the submissions of the parties, and referenced the tenancy agreement addendum, which states at item 37 that the company is the landlord's agent, I decline to remove the realty company as a respondent in the dispute, as I find that at the signing of the tenancy agreement they were an agent of the landlord. Therefore, I find it reasonable for them to be named in the dispute.

Issues to be Decided

- 1) Is the tenant entitled to compensation for monetary loss or other money owed?
- 2) Is the tenant entitled to the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began March 1, 2020 and ended January 29, 2022; rent was \$3,700.00 a month, due on the first of the month; and the tenant paid a security deposit of \$1,850.00, which the landlord has returned.

The tenant testified that he rented a house from the landlord, and that the hydro and gas accounts were in the tenant's name. The tenant testified there was a room in the house which he did not have access to. The tenant testified that the room was partially built when he moved in, and that the last property agency told him the landlord would be "tapping into" the house's hydro and gas; the tenant testified this was done without his consent.

The tenant testified that he and the landlord tried to come to an agreement about hydro payments, and that the landlord installed a hydro meter for the additional room, but it did not work properly, nor did a second meter that was installed.

The tenant testified that he asked the landlord to pay hydro and gas based on square footage. The tenant testified that the landlord agreed to pay for 13.86% of the gas bill, but that the parties were still in dispute about the hydro, and that the landlord had not paid either to the tenant.

The tenant submitted he is seeking to recover \$384.72 for 13.86% of the hydro costs, and \$1,500.00 for the 6 hours he spend calculating the amount owed to him by the landlord for gas and hydro. The tenant submitted as evidence a copy of his calculations of the amount he believes the landlord owes him for hydro, gas, and the tenant's time.

The landlord agreed with the tenant's testimony on the gas payment, stating that he agreed to pay the tenant \$435.47 for gas, 13.86% of the gas bill. The landlord testified he had not yet paid the tenant for the gas because the tenant had not given the landlord invoices until the end of the tenancy.

When I asked the tenant what the original agreement was on utilities, he said there was not one, that the rental agency said that he and the landlord should work one out, but they never did.

The tenant testified he had no way of verifying how much hydro the landlord's room was using.

The landlord testified that at the beginning of the tenancy, the extra room was finished as a basic space, and that in May 2020 the landlord began renovations to make it into a gym. The landlord testified that the renovation was completed in April 2021.

The landlord testified that during the renovation, he and the tenant split the hydro costs. The landlord testified that there was gas-powered radiant heat in the room from May 2021 until the tenant moved out.

The landlord testified that following the renovation, the room was only being used for storage, and there were no appliances in the room. The landlord submitted it would not be fair for him to have to pay for hydro following the completion of the renovation, as the room was not using any electricity.

Item 26 of the signed tenancy agreement addendum states that utilities, including hydro and gas, "are not provided or paid for by the Landlord and are to the account of the Tenant(s)."

Analysis

The tenant is seeking compensation in the amount of \$384.72 for hydro and \$1,500.00 for time he spend on calculations related to the amount the landlord owes to him for gas and hydro. The parties agree that the landlord will pay the tenant \$435.47 for gas.

Section 7 of the Act includes:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 includes:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance; and
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss.

Item 26 of the signed tenancy agreement addendum states that utilities, including hydro and gas, are the responsibility of the tenant.

The tenant has submitted that he has paid additional hydro costs related to the room in the home the tenant did not have access to. The tenant testified that based on his square footage calculations, provided as evidence, the landlord owes the tenant a portion of the hydro costs the tenant paid. The tenant testified that the landlord twice had hydro meters installed to track the energy usage of the separate room, but they did not work. The tenant submitted that he did not have a way to verify how much hydro the separate room was using. The tenant testified that the parties tried to work out an agreement about the hydro costs, but were unsuccessful.

The landlord testified that he paid hydro to the tenant while the room was being renovated. The landlord testified that the renovation was completed in April 2021, and since then the room was not used, it contained no appliances, and was not drawing

electricity. The landlord submits that he therefore he does not owe the tenant additional compensation for hydro.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

With respect to the tenant's claim that the landlord owes him \$384.72 for hydro, I find the tenant has not provided sufficient evidence to prove this claim, and has not overcome the landlord's testimony that the inaccessible room had not been using hydro since its renovation was completed. The tenant himself stated that he was not able to determine how much hydro the inaccessible room was using.

Regarding the tenant's claim for compensation for the time he has spent calculating the amount he believes the landlord owes him, I find there is nothing in the Act, regulation, or the tenancy agreement that contemplates such an expense.

Considering the foregoing, I find the tenant has failed to prove he is entitled to compensation in the amount of \$384.72 for hydro and \$1,500.00 for time he spent on calculations related to utilities charges.

As the tenant is unsuccessful in his application, I decline to award him the filing fee.

Conclusion

The parties agree that the landlord will pay the tenant \$435.47 for gas.

The tenant's application is dismissed.

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: November 24, 2022

Residential Tenancy Branch