Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT, OLC, MNDCL, FFL, FFT

Introduction:

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that this Dispute Resolution Package was sent to the Landlords, via registered mail, although he cannot recall the date of service. The Landlords acknowledged receipt of these documents.

The Tenant filed a second Application for Dispute Resolution in which the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement and to recover the fee for filing the second Application for Dispute Resolution.

The Tenant stated that this second Dispute Resolution Package was sent to the Landlords, via registered mail, although he cannot recall the date of service. The Landlords acknowledged receipt of these documents.

The Landlords filed an Application for Dispute Resolution in which they applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing an Application for Dispute Resolution.

The Landlord stated that their Dispute Resolution Package was sent to the Tenant, via registered mail, on November 07, 2022. The Tenant acknowledged receipt of these documents.

On April 09, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlords, via registered mail, on April 23, 2022. The Landlords acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On August 28, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlords, via registered mail, on September 14, 2022. The Landlords acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On two occasions in November of 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlords, although he cannot recall the date of service. The Landlord stated that these documents were received on November 30, 2022 and this evidence was accepted as evidence for these proceedings.

On December 04, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlords on December 04, 2022. The Landlord stated that these documents were received on December 03, 2022 and this evidence was accepted as evidence for these proceedings.

On four occasions in October of 2022 the Landlords submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via registered mail, on November 07, 2022. The Tenant acknowledged receipt of these documents and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

The Tenant disconnected from the teleconference part way during the hearing and remained disconnected for approximately 3 minutes. No meaningful conversation occurred during this period.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for treating a wasp infestation and/or for being served with a Two Month Notice to End Tenancy for Landlord's Use?
Are the Landlords entitled to compensation for utility costs?

Background and Evidence:

The Tenant and the Landlords agree that:

- When this tenancy began the parties entered into annual leases;
- The most recent written was signed on February 26, 2018, for a tenancy that began on March 01, 2018;
- The Occupant lives in the rental unit, but is not a party to the tenancy agreement;
- On August 09, 2021 the Tenant reported a wasp infestation;
- The Landlord #2 advised the Tenant that he would personally treat the infestation that evening;
- The Tenant contacted a pest control company on August 09, 2021;
- The pest control company successfully treated the infestation;
- The Tenant paid the pest control company $126.00 for the treatment;
- The Landlord has not complied with the Tenant’s request to compensate the Tenant for the cost of the treatment;
- There was a dispute resolution proceeding on February 22, 2022 in regard to the Tenant’s application to cancel a Two Month Notice to End Tenancy for Landlord's Use; and
- The Two Month Notice to End Tenancy for Landlord's Use that was the subject of the proceeding on February 22, 2022 was set aside.

The Tenant stated that he contacted the pest control company because he did not think the Landlord could effectively resolve the issue. The Tenant is seeking compensation for the cost of the pest control visit.

In the Application for Dispute Resolution in which the Landlord applied for an Order requiring the landlord to comply with the *Act* and /or the tenancy agreement, the Tenant declared that he is applying for "compensation for the landlords violation of section 49 of the act for serving a two month eviction notice for personal use of property in bad faith on August 27 2021. We have evidence that they did not intend to occupy the unit but sell the property, showing they lied under oath in our hearing February 22nd 2022. We are seeking compensation under act 51". At the hearing the Tenant reiterated that he is seeking compensation for being served with a Two Month Notice to End Tenancy for Landlord's Use in "bad faith".

The Landlords and the Tenant agree that when the tenancy began, the Tenant agreed that he would pay 2/3 of the gas and hydro bills. The parties agreed that the Tenant paid $160.00 per month towards those costs and at the end of each yearly "lease" the bills would be reconciled. In the event the Tenant overpaid his portion of the bills, money would be paid to the Tenant and in the event the Tenant underpaid his portion of the bills, money would be paid to the Landlord.

The Tenant submits that the agreement to pay 2/3 of the hydro/gas costs is unreasonable and "one sided", as there is no way of determining whether he is using 2/3 of those utilities. He submits that there are 2 suites in the lower portion of the residential complex and that there is a garage, all of which use the same electrical panel. He submits that it is impossible to determine if he is responsible for 2/3 of the hydro/gas consumption.

The Tenant stated that in August of 2020 he first attempted to renegotiate the agreement to pay 2/3 of the hydro and gas. The male Landlord stated that the Landlords did not want to renegotiate that term.

The Tenant submits that he agreed to reconcile the utility bills when his "lease" ended. He submits that he is now on a month-to-month tenancy agreement and, as such, his "lease" has not yet ended. He submits that he should not have to reconcile the utility bills until the end of his month-to-month tenancy. In his written submission the Tenant argued that it is "unreasonable to leave any sort of reconciliation of this nature to the end of a month-to-month lease with no fixed end date".

The Landlord and the Tenant agree that the gas and hydro bills were last reconciled sometime in 2019, although neither party can recall the exact date. In an email to the

Tenant dated October 15, 2020, the Landlord declares that the bills were last reconciled on February 28, 2019.

The Landlords submitted gas and hydro bills, which the Landlord submits total $12,176.73. The Landlord #2 stated that none of the bills submitted have been reconciled. The Tenant stated that he did not calculate the total of these bills, so he cannot dispute that calculation. He stated that he does not know if any of the bills submitted have been reconciled.

The Landlords submit that the Tenant's portion of these utility bills if 2/3 of the total, or $8,117.82. The Tenant stated that he did not calculate his portion of the bills, so he cannot dispute that calculation.

The Landlords submit that after applying 40 of the Tenant's monthly payments of $160.00 towards those bills, which is $6,400.00, the Tenant still owes $1,717.82. The Tenant stated that he did not determine whether the Landlords have accurately applied his monthly payments to these bills.

The Landlords and the Tenant agree that the rental unit was sold. The Landlord #2 stated that the unit was sold on June 07, 2022.

The Tenant stated that he does not know if the excess cost of his utilities was an asset that was transferred to the new owner, although he submits the debt should have been transferred to the new owner. The Landlord #2 stated that the excess cost of the Tenant's utility consumption was not an asset transferred to the new owners.

Analysis:

Section 32 of the *Residential Tenancy Act (Act*) requires a landlord to provide and maintain residential property in a state of decoration and repair that complies 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.

On the basis of the undisputed evidence, I find that the Landlords clearly informed the Tenant of the Landlords' intent to comply with the Landlords' obligations under section 32 of the *Act* when the Landlord #2 told the Tenant the wasp infestation would be treated on the evening of August 09, 2021, which is less than 24 hours after the infestation was reported.

On the basis of the undisputed evidence, I find that the Tenant concluded that the Landlords' plan for treating the wasp infestation was inadequate and he contacted a pest control, which successfully addressed the issue. As the Tenant resolved the problem prior to the Landlords having an opportunity to do so, I find that it was unnecessary for the Landlords to also address the issue.

As the Landlords were clearly intending to address the wasp infestation and the Tenant's subsequent actions made that unnecessary, I cannot conclude that the Landlords failed to comply with their obligation to address the infestation.

Section 67 of the *Act* authorizes me to grant compensation to a tenant if the tenant suffers a loss as a result of the landlord failing to comply with the *Act*. As I cannot conclude that the Landlord failed to comply with their obligation to address the wasp infestation, I cannot conclude that the Tenant is entitled to compensation on the basis of the Tenant's decision to contact a pest control company.

Section 33(1) of the Act defines "emergency repairs" as repairs that are
(a)urgent,
(b)necessary for the health or safety of anyone or for the preservation or use of residential property, and
(c)made for the purpose of repairing
(i)major leaks in pipes or the roof,
(ii)damaged or blocked water or sewer pipes or plumbing fixtures,
(iii)the primary heating system,
(iv)damaged or defective locks that give access to a rental unit,
(v)the electrical systems, or
(vi)in prescribed circumstances, a rental unit or residential property.

Section 32(3) of the *Act* permits a Tenant to make emergency repairs only when all of the following conditions are met:
(a)emergency repairs are needed;
(b)the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; and
(c)following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Even if I accepted that treating a wasp infestation constituted an emergency repair, I would find that the Tenant did not give the Landlords a reasonable amount of time to

address the infestation, as is required by section 32(3)(c) of the *Act*. I find that not waiting 24 hours to allow the Landlord time to address the infestation is simply not reasonable, particularly when the Landlord has informed the Tenant the situation would be addressed that evening.

Section 33(5) of the *Act* requires landlords to reimburse tenants amounts paid for emergency repairs. Section 33(6) exempts landlords from reimbursing tenants for emergency repairs if the tenant made the repairs before giving the landlord a reasonable opportunity to address the emergency. As the Landlords were not given reasonable time to address the infestation, I dismiss the claim to be reimbursed for the cost of treating the wasp infestation.

I have viewed the decision from the dispute resolution proceeding that occurred on February 22, 2022. In this decision that Residential Tenancy Branch Arbitrator granted the Tenant's application to set aside a Two Month Notice to End Tenancy for Landlord's Use, which was served pursuant to section 49 of the *Act*. The Residential Tenancy Branch file number for this hearing appears on the first page of this decision.

As the Two Month Notice to End Tenancy for Landlord's Use was set aside at the hearing on February 22, 2022, I find that the Tenant is not entitled to compensation pursuant to section 51 of the *Act*. The Tenant's application for compensation pursuant to section 51 of the *Act* is dismissed.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. In these circumstances, the Tenant successfully disputed the Two Month Notice to End Tenancy for Landlord's Use that was served pursuant to section 49 of the *Act*. As the Two Month Notice to End Tenancy for Landlord's Use was set aside, or cancelled, the Notice has no "effective date". As the Two Month Notice to End Tenancy for Landlord's Use has no "effective date" the Landlord is not obligated to pay compensation pursuant to section 51(1) of the *Act*.

The intent and purpose of section 51(1) of the *Act* is to compensate a tenant for costs associated to moving whenever a tenancy is ended pursuant to section 49 of the *Act*. As this tenancy was not ended pursuant to section 49 of the *Act*, the Tenant did not incur moving costs and he is not entitled to compensation pursuant to section 51(1) of the *Act*.

Section 51(2) of the *Act* requires a landlord to pay an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and the rental unit, except in respect of the purpose specified in section 49(6)(a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice. As this tenancy did not end pursuant to section 49 of the Act, compensation pursuant to section 51(2) is not relevant.

Section 49 of the *Act* permits a landlord to end the tenancy for various reasons. Section 49(8) of the *Act* permits a tenant to dispute that notice to end tenancy. When a tenant disputes a Two Month Notice to End Tenancy for Landlord's Use, it is left to an Arbitrator to determine if the tenancy should end pursuant to section 49 of the *Act*. Even if an Arbitrator determines that a Two Month Notice to End Tenancy for Landlord's Use should be set aside, this does not establish that a landlord has breached section 49 of the *Act*. Serving a Two Month Notice to End Tenancy for Landlord's Use is not, in itself, a breach of section 49 of the *Act* and, as such, a tenant is not entitled to compensation for being served with that Notice even if it is successfully disputed.

In some circumstances, it could be determined that serving a Two Month Notice to End Tenancy for Landlord's Use with malicious intent could be a breach of a tenant's right to quiet enjoyment. In those circumstances, a tenant might be entitled to financial compensation.

I find that the Tenant's submission that the Landlords served the aforementioned Two Month Notice to End Tenancy for Landlord's Use in "bad faith" is not supported by the decision from the proceedings on February 22, 2022. Rather, that Arbitrator concluded that **"**there is no dishonest motive behind the Landlord seeking to end the tenancy for their own use of the rental unit". In the absence of clear evidence that the Two Month Notice to End Tenancy for Landlord's Use was served for a dishonest motive or with malicious intent, I cannot conclude that the Tenant is entitled to compensation for being served with the Two Month Notice to End Tenancy for Landlord's Use.

On the basis of the tenancy agreement and the addendum to the tenancy agreement submitted in evidence, I find that on February 26, 2018 the Tenant agreed to pay "monthly payment of $160.00 to cover 2/3 of actual utility bills (gas and hydro). These payments will be reconciled against actual invoices and payment or refund of difference

will be made at the end of the Lease".

Section 14(2) of the *Act* stipulates that a term of a tenancy agreement may be amended, other than a standard term, only if the parties agree to the amendment in writing. As the parties did not agree to amend the term of the tenancy agreement that requires the Tenant to pay 2/3 of the gas/hydro bills, I find that this term has not been amended.

Section 3(2)(a) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if it is inconsistent with the *Act* or *Regulations*. I am not aware of anything in the *Act* that prevents a landlord from requiring a tenant to pay a portion of utility charges. I therefore cannot conclude that this term is unenforceable, pursuant to section 3(2)(a) of the *Act*.

Section 3(2)(b) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if it is unconscionable.

Residential Tenancy Branch Policy Guideline #8, with which I concur, reads, in part:

Under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party. Terms that are unconscionable are not enforceable.

Whether a term is unconscionable depends upon a variety of factors. A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage. Exploiting the age, infirmity or mental weakness of a party may be important factors. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.

The burden of proving a term is unconscionable is upon the party alleging unconscionability.

I find that the Tenant has submitted insufficient evidence to establish that the requirement to pay 2/3 of the rent is unconscionable. I therefore cannot conclude that this term is unenforceable, pursuant to section 3(2)(b) of the *Act*.

In concluding that the Tenant submitted insufficient evidence to establish that the term is unconscionable, I find that the Tenant submitted no evidence to show that he did not understand the agreement he was making. Rather, this has been a long standing

agreement that the Tenant repeatedly agreed to when he signed previous tenancy agreements.

In concluding that the Tenant submitted insufficient evidence to establish that the term is unconscionable, I find that the Tenant submitted no evidence to establish that paying 2/3 of the hydro/gas bills was grossly unfair, in relation to the size of his unit and the size of other units in the residential complex.

On the basis of the undisputed testimony of the parties, I find that the parties had previously entered into fixed term tenancies of one year, which they referred to as leases, in which the Tenant agreed to pay 2/3 of the gas and hydro costs. On the basis of the undisputed testimony of the parties, I find that the parties had previously reconciled the gas and hydro bills at the end of each fixed term.

Section 3(2)(c) of the *Act* stipulates that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I accept the term in the most current tenancy agreement is somewhat unclear, as it declares the bills will be reconciled at the “end of the Lease”. As the parties entered into a month-to-month tenancy in their most current agreement there is no “end of the Lease”. I do not, however, find that this is a fatal flaw. I find, based on the previous practise of the parties, that the parties could reasonably expect the bills would be reconciled periodically. I do not find that the Tenant was misled to believe that the bills would not be reconciled until the end of the tenancy. I therefore cannot conclude that this term of the tenancy is unenforceable pursuant to section 32(c) of the *Act.*

Having concluded that the term requiring the Tenant to pay 2/3 of the hydro/gas costs is enforceable, it is left to me to clarify when the bills should be reconciled. Given that the term is unclear, I grant the Tenant the right to determine if any hydro/gas bills not addressed at these proceedings should be reconciled either monthly or annually. The Tenant’s new landlord is obligated to comply with the Tenant’s decision in this regard.

As the rental unit was sold on June 07, 2022, I find it reasonable that outstanding gas/hydro bills for any period prior to that date should be reconciled and that the Tenant should pay any amount owing to the Landlords.

On the basis of the testimony of the parties and the email dated October 15, 2020, in

which the Landlord declared the bills were last reconciled on February 28, 2019, I find that the bills for the period between March 01, 2019 and June 07, 2022 have not yet been reconciled.

On the basis of the evidence submitted by the Landlords and in the absence of evidence to the contrary, I find that the Landlords received gas and hydro bills, in the amount of $12,176.73, which have not yet been reconciled. In the absence of evidence to the contrary, I accept the Landlords' submission that the Tenant's portion of these bills is $8,117.82. (2/3 of $12,176.73)

On the basis of the evidence submitted by the Landlords and in the absence of evidence to the contrary, I find that the Tenant has paid $6,400.00 towards the debt of $8,117.82. I therefore find that the Tenant still owes $1,717.82 for the period ending June 07, 2022 and I grant the Landlords' claim for that amount.

On the basis of the undisputed evidence that the Landlords did not transfer the debt of $1,717.82 to new owner of the rental unit, I cannot conclude that the Landlords are not entitled to collect money that was owed to them prior to the sale of the unit. Although the Landlords could have addressed that debt in the purchase of contract and sale, I am not aware of anything in the *Act* that required them to do so nor am I aware of anything that prevents the Landlords from collecting money that was due to them prior to the sale of the unit.

I find that the Tenant has failed to establish the merit of the Application for Dispute Resolution, in which he applied for a monetary Order for money owed or compensation for damage or loss. I therefore dismiss the Tenant's application to recover the fee paid to file that Application.

I find that the Tenant has failed to establish the merit of the Application for Dispute Resolution, in which he applied for an Order requiring the landlord to comply with the *Act* and/or tenancy agreement. I therefore dismiss the Tenant's application to recover the fee paid to file that Application.

I find that the Landlords' Application for Dispute Resolution has merit and that they are entitled to recover the fee for filing their Application.

Conclusion:

The Application for Dispute Resolution in which the Tenant applied for a monetary

Order for money owed or compensation for damage or loss is dismissed, without leave to reapply.

The Application for Dispute Resolution in which the Tenant applied for an Order requiring the landlord to comply with the *Act* and/or tenancy agreement is dismissed, without leave to reapply.

The Landlords have established a monetary claim, in the amount of $1,817.82**,** which includes $1,717.82 for utilities and $100.00 in compensation for the fee paid to file an Application for Dispute Resolution. Based on these determinations I grant the Landlords a monetary Order for $1,817.82.

In the event the Tenant does not voluntarily comply with this monetary Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court. Costs of enforcing a monetary Order through the Province of British Columbia Small Claims Court are typically borne by the party who has not complied with the Order.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 14, 2022

Residential Tenancy Branch