



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sterling Management Services
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant June 28, 2022 (the “Application”). The Tenant applied for an order that the Landlord comply with the Act, regulation and/or tenancy agreement. The Tenant also sought to recover the filing fee.

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

T.L. was originally named as a tenant on the Application; however, they have been removed because they have a separate tenancy with the Landlord and are not a co-tenant of the Tenant.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence.

The Tenant testified that the hearing package and their evidence were sent to the Landlord by registered mail July 25, 2022, and that Tracking Number 991 relates to this. The Tenant testified that the package was sent to the Landlord’s address on the tenancy agreement. The Tenant submitted the customer receipt for the package. I looked Tracking Number 991 up on the Canada Post website which shows the package was delivered July 26, 2022.

Based on the undisputed testimony of the Tenant, customer receipt and Canada Post tracking information, I am satisfied the Landlord was served with the hearing package and Tenant's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Based on the Canada Post tracking information, I find the Landlord received the package July 26, 2022. I find the Tenant complied with rule 3.1 of the Rules in relation to the timing of service.

The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or tenancy agreement?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant sought \$417.70 in compensation from the Landlord for a utilities charge. The Application states:

My lease agreement includes rent and utilities (with a minimum utility charge). I recently received an email stating that I owed ~500 dollars for an excess utility rate and two late fees (\$25/each) from BC Hydro. I do not receive these utility bills and they are not in my name...

The Tenant submitted a written tenancy agreement. The tenancy started January 15, 2020, and was for a fixed term ending January 31, 2021. Rent was \$1,200.00 per month due on the first day of each month. The Tenant paid a \$600.00 security deposit and \$600.00 pet damage deposit. The agreement has a three-page addendum.

The Tenant testified that they moved out of the rental unit at the end of August 2022.

The Tenant testified that the Landlord charged the Tenant a flat rate for utilities throughout the tenancy. The Tenant testified that the Landlord then charged the Tenant \$417.70 for increased use of utilities and late fees regarding hydro payments. The

Tenant disagrees with the \$417.70 charge by the Landlord because the Tenant was only ever charged a flat rate for utilities and the Tenant had paid the flat rate for the period in question. The Tenant also disputes the \$417.70 charge because the Tenant does not fully understand why they were charged this amount and some of this amount is for late payment of hydro bills which were never in the Tenant's name. The Tenant disputes that they are responsible for the Landlord paying hydro bills late. The Tenant testified that the BC Hydro bills relate to water, heat and electricity in the rental unit.

The Tenant testified that the Landlord took the \$417.70 out of their account July 15, 2022, and the Tenant is seeking this back from the Landlord. The Tenant testified that the \$417.70 was wrongly taken from them.

The Tenant testified that there was no agreement between the parties about utilities and the amount the Tenant paid each month for utilities during their two-year tenancy was always the same, except for the \$417.70 charge. The Tenant maintained that they only owed a flat rate for utilities during the tenancy.

The Tenant submitted the following documentary evidence:

- BC Hydro bills.
- A Statement from the Landlord showing a BC Hydro "overage charge" on the account dated April 05, 2022, for \$399.70 and two "late fees" of \$25.00, one on May 06, 2022, and one on June 06, 2022.
- A Tenant Show Sheet with the Tenant's name on it dated September 01, 2020, which states the rent amount as \$1,200.00 and "utilities + water" as \$70.00 plus \$200.00. The Tenant Show Sheet shows that water, electricity and heat are not included in rent.
- An email from the Landlord about the Tenant's rent being due with a statement attached that shows the BC Hydro overage charge and late fees as shown on the Statement and outlined above.
- An email from the Landlord with a ledger showing the Tenant paid \$250.00 for monthly utilities and \$80.00 for monthly water in May, June and July of 2022.

Analysis

I have considered the Application as a compensation request because this is what the Tenant is seeking, and I am satisfied the Application is clear about this.

Section 7 of the *Act* states:

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* states:

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this 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.

Based on the BC Hydro bills in evidence, I find the bills are for electricity, not water. Based on the Tenant's undisputed testimony, I accept that the BC Hydro bills cover heat and electricity for the rental unit in that I accept the heat is electric heat.

The agreement between the parties about utilities is set out in the written tenancy agreement. Section 3 of the tenancy agreement shows utilities are not included in the rent amount. Section 3 states:

Minimum \$70.00 water/sewer and \$200.00 utility surcharge due with rent on the 1st.

Term 16 of the addendum addresses utilities, but not the amount owed for utilities.

Term 21 of the addendum addresses water usage in the rental unit, not electricity usage.

Term 28 of the addendum addresses utility payments; however, applies when utilities are included in rent, which is not the case here.

As stated, the Tenant Show Sheet shows the utilities and water for the rental unit are \$70.00 + \$200.00.

I accept the undisputed testimony of the Tenant that they paid a flat rate for heat and electricity throughout the tenancy from January 2020 to August 2022.

I accept the Tenant's undisputed position that the Landlord charged the Tenant \$417.70 without authority to do so for the following reasons. Although the written tenancy agreement refers to a "minimum" utility surcharge, it does not set out any clear indication of when or why the Tenant would owe more than the minimum. The Tenant paid a flat rate for heat and electricity for more than two years and received the increased charge without notice or explanation, which I find unacceptable. The BC Hydro bills are not for the amount charged by the Landlord, and it is not clear how the Landlord arrived at the amount charged. The Tenant does not know why the Landlord charged the \$417.70. There is no documentary evidence from the Landlord to the Tenant before me to explain why the Landlord charged the \$417.70. Nobody for the Landlord appeared at the hearing to explain why the Landlord charged the \$417.70.

Given the above, I find the \$417.70 charge to be contrary to the written tenancy agreement and established practice of the Tenant paying a flat rate for heat and electricity throughout the tenancy. In the absence of notice and further explanation as to why the additional amount was charged, I am not satisfied the Landlord was entitled to charge the additional amount. Given the Tenant paid the additional amount, I award the Tenant \$417.70 as reimbursement for the charge.

Given the Tenant has been successful in the Application, I award the Tenant the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord must pay the Tenant \$517.70 and the Tenant is issued a Monetary Order in this amount.

Conclusion

The Landlord must pay the Tenant \$517.70 and the Tenant is issued a Monetary Order in this amount. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Act*.

Dated: January 04, 2023

Residential Tenancy Branch