



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVANCED PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on September 29, 2022, wherein the Landlord sought monetary compensation for the unpaid electrical utility and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on December 12, 2022. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. Both Tenants called into the hearing as did agents for the Landlord, T.M. and A.F.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. The parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Landlord's Name

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rule 4.2 of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) (RTA) 57(3)(c) (MHPTA) which allows an Arbitrator to amend an Application for Dispute Resolution.

The Landlord named on the Application was the property owner, K.M. K.M. was not in attendance at the hearing. The agent, T.F. testified that the Landlord named on the tenancy agreement, R.L.P.M., no longer managed the property. T.F. further testified that on November 17, 2015, the Tenant was informed that A.P.M. would be responsible for management of the property and that as of January 1, 2016 all rent would be payable to A.P.M. T.F. confirmed she is an agent for A.P.M. and that as of that date all dealings with the rental property and the Tenant were through the Landlord, A.P.M. The Tenant did not take issue with the Landlord's request to amend the Application to properly name the Landlord.

I therefore amend the Application to name A.P.M. as the Landlord.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the tenancy agreement was provided in evidence before me and which confirmed this tenancy began October 1, 2012. Rent was initially \$1,000.00 per month and the Tenants paid a \$500.00 security deposit and \$500.00 pet damage deposit. The parties agreed that the tenancy ended June 30, 2022.

In the Application before me the Landlord sought monetary compensation for the unpaid electrical utility in the amount of \$1,802. In this respect the Landlord's agents noted that electricity was not included in the payment of rent as per paragraph 3(b) of the tenancy agreement, which I reproduce in its entirety here:

b) What is included in the rent: (Check only those that are included and provide additional information, if needed.)
The landlord must not terminate or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Stove and Oven	<input type="checkbox"/> Window Coverings	<input type="checkbox"/> Storage
<input type="checkbox"/> Electricity	<input type="checkbox"/> Dishwasher	<input type="checkbox"/> Cablevision	<input checked="" type="checkbox"/> Garbage Collection
<input type="checkbox"/> Heat	<input checked="" type="checkbox"/> Refrigerator	<input checked="" type="checkbox"/> Laundry (free)	<input checked="" type="checkbox"/> Parking for <input type="text"/> vehicle(s)
<input type="checkbox"/> Furniture	<input checked="" type="checkbox"/> Carpets	<input type="checkbox"/> Sheets and Towels	<input type="checkbox"/> Other: <input type="text"/>
<input type="checkbox"/> Additional Information: <input type="text"/>			

T.M. further testified that until May of 2021 the electrical utility was in the Tenants' name. At this time the Landlord was in the process of renewing her insurance and wished to take advantage of various discounts and rebates for converting the furnace to a more efficient heat pump. In order to obtain those rebates the electrical utility needed to be in the Landlord's name. T.M. stated that at that time the Tenants ceased paying the electrical utility and the sum of \$1,802.33 of accumulated between May of 2021 and February of 2022.

In response to the Landlord's claim, the Tenant, J.N. testified as follows. She stated that when the Landlord put the electrical utility in her name, this was a breach of the tenancy agreement. The Tenant claimed that once the utility was no longer in her name she was not able to dispute the electricity usage.

J.N. confirmed that the rental unit is a single family dwelling and that all the electricity usage was that of hers and her husbands. She stated that the usage increased in the summer, which she found unusual, although she confirmed the heat pump also had a cooling feature. The Tenant did not provide any evidence as to the usage in the winter months.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord/Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

After considering the testimony, evidence and submissions of the parties, and on a balance of probabilities, I find as follows.

I find the Tenants were obligated to pay the cost of their electrical utility in addition to their rent. This is specifically provided for in their tenancy agreement. While the Landlord may have changed the billing information to take advantage of cost savings and energy efficiency rebates, this did affect the Tenants' obligation to pay the cost of their electrical utility. As such, I find the Tenants breached the tenancy agreement when they stopped paying for the electrical utility.

I further find the amounts claimed by the Landlord, namely \$1,802.33, to represent the amount outstanding for the Tenants' electrical utility charges. As this amount relates to the Tenants' use only, I find the amount to be recoverable from the Tenants.

I therefore award the Landlord the \$1,802.33 claimed. As the Landlord has been successful in their application, I also award them recovery of the \$100.00 filing fee for a total monetary Order in the amount of **\$1,902.33**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlords Application is granted in its entirety.

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: January 11, 2023

Residential Tenancy Branch