



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with a tenant's application for monetary compensation for overpayment for electricity.

Both parties appeared and/or were represented at the hearing and the parties were affirmed. The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process.

The hearing was held over three dates and the Interim Decisions should be read in conjunction with this decision.

At the third hearing session, I confirmed that the parties had exchanged the additional materials and calculations that I had authorized and ordered. I have admitted all of the evidence and materials of both parties and considered it in making my decision.

By way of the tenant's detailed calculation that was submitted pursuant to the second Interim Decision, the tenant recalculated his monetary claim and I have amended the tenant's application to reflect the reduction accordingly.

Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Issue(s) to be Decided

1. Has the tenant established an entitlement to the compensation he seeks for overpaid electricity, as amended?
2. Award of the filing fee.

Background and Evidence

The tenancy started on August 1, 2021 and ended on August 31, 2022. The rent was \$1695.00 per month, payable on the first day of every month. The tenant was required to have a hydro account in his own name.

The rental unit was the lower unit of a house. The upper unit was also tenanted. There are two separate electrical panels identified as “upstairs” and “downstairs”, each with their own separate electric meter.

It is undisputed that in June 2022 the tenant went to install a dishwasher and turned off a breaker in “downstairs” electrical panel. The upper tenant complained that doing so shut off power to an outlet upstairs. The tenant reported the issue to the landlord. The landlord attended the property along with her husband on June 17, 2022 in an effort to determine whether the upper unit was receiving electricity by way of the tenant’s electric panel and meter. The landlord acknowledged that there may have been a few minor connections to the upper unit from the lower unit electric panel.

The tenant is of the position he has been paying for electricity used by the upper unit tenants. The tenant proposes that a fair resolution would be to average the cost for the two units and the tenant should recover the amount he has paid over the average, from the landlord. At the time of filing, the tenant did not have sufficient information to make this calculation; however, I ordered the landlord to obtain the electric bills from the upper unit tenants and provide them to the tenant, which she did. After receiving the bills, the tenant calculates that he paid \$1095.26 more for electricity than the upper tenants did during approximately the same time period and he should recover half of that, or \$547.63 from the landlord. The tenant also requested compensation of \$500.00 for inconvenience suffered as a result of this dispute; however, I dismissed that component summarily and the costs recoverable for seeking dispute resolution is limited to the filing fee.

In addition to his hydro bills, the tenant provided copies of email communications with the landlord during the latter part of the tenancy regarding the issue.

The landlord calculated that the tenant paid approximately \$928.74 more in electricity than the upper unit tenants for a similar time period, but was of the position the tenant is not entitled to compensation because the upper tenants were also paying for the electricity for the shared hot water tank and the shared laundry machines, the upper unit

has a fireplace whereas the lower unit does not, and there were four occupants in the lower unit versus two occupants in the upper unit.

The tenant acknowledged that there was only one water tank and one set of laundry machines in the building but the tenant suggested that the upper tenants were home more than he and his family members.

The tenant pointed to his last hydro bill that shows electricity consumption for August 10 – 31, 2022 even though the tenants vacated on August 15, 2022 as evidence the upper unit was using electricity supplied by his account. For the period of time after the tenants vacated until the end of the month, the landlord stated the tenant left the fridge and stove plugged in. The tenant could not recall but acknowledged that he may have left them plugged in.

The landlord provided images of the two electrical panels and their separate meters; a letter from BC Hydro confirming there are two meters at the residential property; and, the hydro bills for the upper unit.

The landlord provided an email purportedly written by the upper tenants. The upper tenants write that they use the wood burning fireplace to reduce their use of baseboard heaters and there are only two of them occupying their unit. The upper tenants acknowledge that there were one or two outlets in their unit that appeared to have been connected to the lower unit's electric panel.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Upon consideration of everything before me, I provide the following findings and reasons.

Conclusion

The tenancy agreement provides that the rent does not include hydro. It is undisputed that there are separate electric panels and meters assigned to each of the living units. Upon review of the tenancy agreement, I do not see any disclosure from the landlord that there were some electrical connections to the upper unit on the “downstairs” electric panel and meter.

I find that a reasonable person would interpret the tenancy agreement and the existence of separate electrical panels and electric meters to mean the tenant must pay for electricity consumed in their unit.

Although the residential property has separate electric panels and meters for each of the living units, it is readily apparent that some connections are co-mingled. For example: the lower unit panel shows there are lights and plugs in the living room for both the upper and lower units; and, the upper unit panel shows there are lights and plugs in the bedrooms of both the upper and lower units. Further, I find it apparent the hot water tank, the clothes washer, and the clothes dryer are on the upper unit’s panel yet these facilities are shared. Also, the upper tenants even acknowledge that there are a couple of outlets that they are aware of that appear to have been connected to the lower unit’s panel.

Residential Tenancy Policy Guideline 1 provides the following with respect to shared utilities:

SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.
2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on

the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

In light of the above, I find the tenant cannot be held responsible for paying for electricity consumed in the upper unit and the requirement to do so is unconscionable, which is a violation of section 6 of the Act.

Having found a violation of the Act, the issue to determine is the tenant's loss as a result of the violation.

Both parties provided calculations and rationale for their opposing positions. Upon consideration of everything before me, I find I am unsatisfied the tenant suffered a net loss when I consider the following factors:

1. The lower unit occupants likely consumed more electricity than the upper unit occupants because:
 - a. The upper unit has a fireplace the upper tenants use to reduce their reliance on the baseboard heaters; whereas, the rental unit did not have a fireplace.
 - b. A lower unit is generally cooler than an upper unit most of the year which may require greater usage of the baseboard heaters in the lower unit.
 - c. The rental unit is occupied by four persons as opposed to two people upstairs and more occupants typically means more cooking, cleaning, and bathing which are activities that may account for larger hydro bills.
 - d. Although the tenant stated that he and his family were away from home much of the day, the tenant did not indicate that the rental unit went unheated throughout the day.
 - e. Baseboard heaters and an oven are large consumers of electricity and the tenant did not deny using these appliances in the rental unit.
2. The electricity consumed by the outlets connected to the upper unit is likely offset by the tenant not having to pay for electricity for other uses:
 - a. The tenants did not pay for any electricity for hot water or use of the laundry machines even though their family of four used such facilities.
 - b. Hot water and clothes dryers are notoriously large consumers of electricity and the tenant did not pay for the electricity for these large appliances.
 - c. The upper unit tenants were paying for electricity for the bedrooms lights and plugs in the rental unit.

I also reviewed the tenant's final hydro bill in the amount of \$44.03; but it does not include the detailed consumption data. I see that the final bill is for the period of August 10, 2022 through August 31, 2022 but the tenant occupied the unit six days of that billing cycle, from August 10 - August 15, 2022 and the bill includes a basic charge based on the number of days in the billing cycle, not consumption. Without the detailed consumption data, it is entirely possible the tenant used a significant portion of the consumption during the few days before moving out and then after vacating the rental unit the fridge and stove were left plugged in. A fridge consumes a fair amount of electricity, especially when empty and during warmer months as would have been the case between August 16 – 31, 2022. Therefore, I do not find the final hydro bill to be very determinative of supportive of the tenant's position.

As described earlier in this analysis, a claimant must not only show that there was a violation but that the claimant suffered a loss as a result of the violation. I find there was a violation by the landlord but I am unsatisfied the tenant suffered a loss a result of the violation.

Although I find it is unlikely the tenant suffered a loss after all of the factors are considered, including the tenant's use of hot water and laundry for which the tenant did not pay electricity, I find the landlord's actions caused the tenant to seek further remedy by filing this Application for Dispute Resolution. I make this finding considering the following communication between the parties:

On June 26, 2022 the tenant writes to the landlord:

Now that you were here on the 17th and you saw the connections are all mixed up, I would like to ask you, for the second time, to do something about it. We would like to know, when are you sending an electrician to connect the breakers correctly for us to be able to pay only for our consumption? And the second question is: what is your response to our request to recognize what we have paid in excess since October? There is a 400 dollars bill that has to be paid on July the 4th and also rent for this month, so we would like to know what are you going to do.

We have been paying high bills for hydro and we think that it is not fair. Now, summer is beginning and we can see and hear some device, probably an air conditioner, connected upstairs, and since their connections are still in our breakers, we are going to pay for it, and once again we think that is not fair.

We hope you can provide us with a solution and somehow a refund for what we have been paying in excess.

On June 28, 2022 the tenant writes to the landlord:

We have not heard from you since our last email. Just in case you missed it, here are the 2 things we need to know:

- When are you sending an electrician to connect the breakers correctly so we can be able to pay only for our consumption? You saw, when you visit us, that the connections were mixed up with the upstairs suite.
- What is your response to our request to recognize what we have paid in excess since October 2021? You said that you were going to request the bills from upstairs and see how much we have paid in excess. We are waiting for that number to be discounted from the next rent payment.

Please respond to us via email

The landlord finally responds on June 29, 2022 with a very unhelpful and curt response:

The answer is no, the matter is closed and not paying your full rent risks an eviction notice.

Having seen evidence that at least some of the outlets upstairs were powered by the tenant's electric panel and meter, I am of the view an appropriate response from the landlord would have been to investigate further and propose a reasonable resolution, including: having an electrician attend the property and separate the connections; determine the tenant's electricity consumption versus the upper unit's consumption just as the landlord did for this dispute resolution proceeding; provide the tenant with an explanation as to how the tenant's loss is likely offset by use of the hot water and laundry machines without the tenant having to pay for the electricity used for those appliances. The landlord did none of these things and essentially was dismissive of the tenant's legitimate concerns at that time. Therefore, I award the tenant recovery of the \$100.00 filing fee the tenant paid for this Application for Dispute Resolution.

Provided to the tenant is a Monetary Order in the amount of \$100.00 to serve and enforce upon the landlord.

Conclusion

The tenant is provided a Monetary Order in the amount of \$100.00 to enforce against the landlord.

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: May 17, 2022

Residential Tenancy Branch