



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenant attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Tenant was assisted during this hearing by an interpreter, BC.

The Landlord did not attend this hearing. I left the teleconference hearing connection open until 9:43 am in order to enable the Landlord to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding.

### Preliminary Matter – Service of Dispute Resolution Documents

The Tenant obtained a substituted service order from the Residential Tenancy Branch dated January 23, 2023, which authorizes the Tenant to serve the Landlord via email to the Landlord's agent CL. The Tenant submitted an email to CL dated January 26, 2023 as proof of service of the substituted service order and the notice of dispute resolution proceeding documents. Based on the foregoing, I find the Landlord was sufficiently served with the substituted service order and the notice of dispute resolution proceeding documents pursuant to section 71 of the Act.

The Tenant's evidence includes the original and revised tenancy agreements signed by the parties. I am satisfied that such documents already in the possession of the Landlord. As such, I find the Landlord to be sufficiently served with the parties' tenancy agreements pursuant to section 71(2)(c) of the Act.

The Tenant's evidence also includes hydro spreadsheets. The Tenant indicated that a copy of the spreadsheets was emailed to CL on December 20, 2022. I find the Landlord to be sufficiently served with this evidence pursuant to section 71(2)(c) of the Act.

The Tenant submitted additional evidence including email and text message correspondence with CL. I do not consider the remainder of the Tenant's documentary evidence for the purpose of this decision, as I do not find it is necessary to do so. I am also unable to determine whether the Landlord had been served with a copy of the evidence in accordance with the Act and the Residential Tenancy Branch Rules of Procedure prior to the hearing.

#### Preliminary Matter – Landlord's Non-attendance

Having found the Landlord to be sufficiently served with notice of this hearing, I directed this hearing to continue in the Landlord's absence.

#### Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the Act, the regulations, or the tenancy agreement?
2. Is the Tenant entitled to reimbursement of the filing fee?

#### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is a basement suite in a house. This tenancy commenced on January 13, 2020 and is month-to-month. Rent is currently \$1,636.00 due on the twelfth day of each month. The Tenant paid a security deposit of \$790.00 and a pet damage deposit of \$790.00.

In this application, the Tenant submitted as follows (portions redacted for privacy):

The agent, [CL] (who is called as [L]), who works for the landlord, [Landlord], does not comply with my tenancy agreement. There is no home address for the landlord. I pay for hydro based on meter reading. [L] asked me to pay the meter for the hot water tank usage. This request was not in the tenancy agreement. The hydro bill is not under the landlord but the upstairs tenant, [DC]. The upstairs tenants do the spreadsheets. I also want the landlord to do the spreadsheet.

The Tenant's evidence is that she pays for hydro or electricity according to a meter that measures usage in the rental unit. The Tenant indicated that in December 2022, the Landlord added a new charge for the Tenant to start paying for hot water. The Tenant stated that there were threats to turn off the hot water if she did not pay as requested.

The Tenant seeks orders for:

- the Landlord comply with the tenancy agreement by not asking for additional payment for hot water; and
- the Landlord comply with the Act by not terminating or restricting access to hot water in the rental unit.

### Analysis

*1. Is the Tenant entitled to an order that the Landlord comply with the Act, the regulations, or the tenancy agreement?*

I have reviewed the parties' tenancy agreement and find as follows:

- The parties' tenancy agreement is in the standard Residential Tenancy Branch form with a one-page addendum. The revised version of this agreement adds a term extending the tenancy to September 12, 2022.
- Clause 3(b) of the tenancy agreement indicates that water is included in the monthly rent, but electricity is not included.
- Clause 5 of the tenancy agreement addendum states that "Tenant shall pay 1/3 of gas and pay hydro according to meter reading."

The hydro spreadsheets indicate that the basement unit is responsible for “1/3 of all charges except for usage”.

The hydro spreadsheets include a kilowatt-hour (kWh) reading based on “usage per meter reading”, as well as a kWh reading based on one-third of the “usage per hot water tank”. The “total basement usage” is calculated as the sum of these two readings.

Considering the wording of clause 5 of the tenancy agreement addendum, the hydro spreadsheets, and the Tenant’s undisputed testimony, I find the Tenant is only responsible to pay for hydro according to the meter readings for her unit. I find there is a meter that specifically measures hydro usage for the rental unit. I accept the Tenant’s evidence that she had always paid for hydro costs according to the readings from this meter.

I find the “1/3” in clause 5 of the tenancy agreement addendum to apply only to payment of the Tenant’s share for gas.

I find there are no express or implied terms in the parties’ tenancy agreement for the Tenant to pay one-third of the hydro meter for the hot water tank, or to pay one-third of any common hydro meter for the property.

According to *Trollope & Colls Ltd. v. North West Metropolitan Regional Hospital Board*, [1973] 1 W.L.R. 601 (H.L.) at 609, as cited in *Karim v. Seo*, 2010 BCSC 746 at para. 48, an unexpressed term can be implied if and only if it is found that the parties must have intended that term to form part of their contract. It is not enough to find that such a term would have been adopted by the parties as reasonable people if it had been suggested to them. It must have been a term necessary to give business efficacy to the contract, a term which, though tacit, formed part of the contract which the parties made for themselves.

I find clause 5 of the addendum already addresses hydro, and does not indicate that the Tenant is to pay one-third for hydro other than according to the meter reading, which I have found is for the meter specific to the rental unit. I do not find it to be necessary or implied that the Tenant had agreed to pay a share of any other hydro meter for the property, such as a meter for the hot water tank.

Furthermore, I find that hot water is a service or facility that is essential to a tenant's use of a rental unit as living accommodation. Under section 27(1) of the Act, a landlord must not terminate or restrict an essential service or facility.

Pursuant to section 62(3) of the Act, the director may make an order necessary to give effect to the rights, obligations, and prohibitions under this Act, including an order that a landlord or tenant comply with the Act, the regulations, or the tenancy agreement.

I note the definition of a "landlord" in section 1 of the Act includes the owner's agent or another person who, on behalf of the landlord, exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

Therefore, pursuant to section 62(3) of the Act, I order:

1. the Landlord and any agent of the Landlord to comply with the tenancy agreement by not charging the Tenant for hydro except in accordance with the tenancy agreement, which is based on meter readings specific to the rental unit, unless the parties otherwise agree to amend the tenancy agreement; and
2. the Landlord and any agent of the Landlord to refrain from terminating or restricting hot water access in the rental unit.

I note I do not find anything in the Act, the regulations, or the parties' tenancy agreement to prohibit the upstairs tenants from collecting the Tenant's share of the hydro as agents for the Landlord. However, I note that according to Residential Tenancy Branch Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises, a term in a tenancy agreement which requires a tenant to put the utilities in their name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the regulations.

*2. Is the Tenant entitled to reimbursement of the filing fee?*

The Tenant has been successful in this application. I grant the Tenant reimbursement of her filing fee under section 72(1) of the Act. Pursuant to section 72(2)(a), I authorize the Tenant to deduct \$100.00 from next month's rent payable to the Landlord in full satisfaction of the filing fee awarded.

Conclusion

The Tenant is granted orders pursuant to section 62(3) of the Act as stated above.

The Tenant's claim for reimbursement of the filing fee is granted. Pursuant to section 72(2)(a) of the Act, the Tenant is authorized to withhold a one-time amount of **\$100.00** from next month's rent payable to 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: June 1, 2023

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Residential Tenancy Branch