



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The “Act”) in response to cross applications from the parties.

The Landlord filed their application on March 27, 2023, and seeks the following:

- A monetary order for unpaid rent or utilities.
- A monetary order for compensation for monetary loss or other money owed.
- An order permitting the Landlord to retain the Tenant’s security deposit.
- Authorization to recover their filing fee from the Tenant.

The Landlord filed their application on March 17, 2023, and seeks the following:

- Compensation for monetary loss or other money owed.
- An order for the Landlord to return their security deposit.
- Authorization to recover their filing fee from the Landlord.

The Landlord’s agent, P.H., acknowledged receipt of the Tenant’s application and evidence and I find that they were served by the Tenant as required under the *Act*.

The Tenant did not attend the hearing. P.H. testified that they served the Tenant with the Landlord’s application and evidence by registered mail on April 1, 2023, at the forwarding address provided to the Landlord on the end of tenancy condition inspection report. A tracking number was provided (on the cover page of the application).

I checked the tracking number provided by P.H. and confirmed that the Landlord had indeed served the Tenant at the same forwarding address indicated on the end of tenancy condition inspection report. The Canada Post delivery receipt indicates that someone by the same name as the Tenant took delivery of the parcel on April 23, 2023.

I accept P.H.’s undisputed testimony that the parcel included the Landlord’s evidence. I find that the Tenant was deemed served with the Landlord’s application and evidence, pursuant to section 90 of the *Act*, on April 6, 2023, five days after the Landlord served the Tenant with their application and evidence by registered mail.

Background and Evidence

Evidence was provided showing that this 12-month, fixed-term tenancy, began on September 1, 2022, pursuant to a written tenancy agreement, dated for reference August 24, 2022 (the "Tenancy Agreement").

Pursuant to the Tenancy Agreement, the monthly rent was \$1,400.00, payable on the first day of every month, with a security deposit of \$700.00.

P.H. testified that the Tenant vacated the Rental Unit in contravention of their fixed term tenancy on March 15, 2023. P.H. testified that the Tenant and the Landlord did not have a mutual agreement to end the tenancy. The Landlord submitted a copy of an email from the Tenant to P.H., dated January 26, 2023, wherein the Tenant states: "[p]lease accept this letter as my notice for vacating the suite by April 30, 2023."

P.H. testified that their rental agency charges the Landlord a placement fee every time they find a new Tenant for the Landlord. A copy of the management agreement between the Landlord and P.H.'s agency was submitted as evidence, which states that an administration fee of "50% of monthly rent plus GST" will be paid by the Landlord every time a new tenancy begins.

P.H. directed me to clause 37 of the Tenancy Agreement which states:

If the tenant ends the fixed term tenancy before the end of the original term ... the Landlord may, at the Landlord's option treat this Agreement as being at an end. In such event, the sum of half a month's rent plus GST will be paid by the Tenant to the Landlord as Liquidated Damages and not as a penalty to cover the administrative costs or re-renting the rental unit. The Landlord and Tenant acknowledge and agree that the payment of Liquidated Damages will not preclude the Landlord from exercising any further right of pursuing another remedy available in law or equity, including, but not limited to damage of the rental unit or residential property and damages as a result of lost rental income due to the Tenant's breach of any term of this agreement.

The Landlord is seeking liquidated damages in the amount of \$735.00, which figure represent one half of one month's rent (\$700.00) and GST (\$35.00), pursuant to clause 37 of the Tenancy Agreement and for damages P.H. stated the Landlord incurred when the Tenant ended their lease early.

Both parties submitted copies of condition inspection reports and both parties' copies were signed. The end of tenancy condition inspection report indicates that the "Move-Out Date" is March 15, 2023, and that the end of tenancy condition inspection took place on the same date. The Tenant has stated their forwarding address on the move-out condition inspection report.

The Landlord is also seeking \$273.82 in unpaid Fortis BC gas bills. P.H. testified that the Tenant has only paid \$3.25 since the start of their tenancy towards gas. The Tenancy Agreement states that the Tenant is responsible for 25% of gas bills in the household in which the Rental Unit is in. P.H. testified that there is a separate rental unit in the same residential property and the tenant in that unit is responsible for 75% of the gas bills.

In their application, the Tenant has stated that after they entered the agreement, they discovered there is no gas in the Rental Unit, notwithstanding their agreement with the Landlord that they were to receive both electricity and gas. P.H. testified that the Landlord purchased the Rental Unit recently believing that the boiler in the Rental Unit used natural gas as fuel; but, after they entered into the Tenancy Agreement with the Tenant, they discovered that it was an electric boiler. P.H. testified that the Rental Unit does not use gas.

The Tenant is seeking \$430.18 as compensation for money they paid for gas. P.H. testified that the Tenant has only ever paid \$3.25 for gas, and they do not know what this amount is in reference to. The Tenant has not provided any documentary evidence for their claim that they have paid \$430.18 for gas, and they did not attend the hearing to provide affirmed testimony.

The Tenant is seeking the return of their security deposit in full. Both parties are seeking their filing fees.

Analysis

- ***Security Deposit***

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and the *Regulation*. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

In this case, both parties submitted a copy of the start of tenancy and end of tenancy condition inspection report, which are signed and filled out in the prescribed form. Therefore, neither party extinguished their rights regarding the security deposit.

Based on the testimony of P.H. and the documentary evidence provided by both parties, I find that the tenancy ended on March 15, 2023. I also find that the Landlord received the Tenant's forwarding address on the same date.

Section 38(4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant. There is no evidence before me to indicate that the parties agreed for any amount of the deposit to be withheld.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security deposit, section 38(1) of the *Act* states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay the security deposit or make an application for dispute resolution claiming against the security deposit. In this case, the Landlord had until March 30, 2023, to either return the security deposit in full or file an application with the Residential Tenancy Branch. The Landlord filed their application on March 27, 2023, within 15 days.

I find the Landlord complied with section 38(1) of the *Act* and was permitted to claim against the security deposit.

- ***Compensation***

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.

7(2) A landlord ... who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the *Act* allows a monetary order to be awarded for damage or loss when a party does not comply with the *Act*. The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When a party makes a claim for compensation, they must prove the following on a balance of probabilities:

1. a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

- *Natural Gas*

In this case, both parties agree that no gas is being used in the Rental Unit, notwithstanding the Tenancy Agreement which states that the Tenant is responsible for 25% of gas bills issued for the residential property in which the Rental Unit is in. The

Residential Tenancy Branch Policy Guideline 8 states the following regarding Unconscionable Terms in tenancy agreements:

Under the *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.

In this case, I find the following term in the Tenancy Agreement unconscionable as against the Tenant: “Tenant share 25% ... gas with upstairs”. I make this finding because the term is grossly unfair to the Tenant who entered the Tenancy Agreement, which was provided to them by the Landlord, believing they had use of natural gas and electricity. Even if the Landlord did not know the Rental Unit did not use natural gas, they made a representation to the Tenant which the Tenant relied on to sign a tenancy agreement that was drafted by the Landlord.

P.H. submitted several gas bills in the name of another tenant that occupies another rental unit in the residential building and testified that the other tenant is only paying 75% of these bills, therefore someone else must be responsible for the 25%. In this case, I find that the Landlord Q.W. is responsible for the remaining 25%, not the Tenant.

Therefore, I reject this part of the Landlord’s claim, without leave to reapply.

P.H. provided undisputed testimony that the Tenant has only paid \$3.25 for gas, which I accept. The Tenant did not submit any documentary evidence to substantiate their claim that they have paid \$430.18 for gas. The Tenant also did not appear at the hearing to provide affirmed testimony. I grant the Tenant \$3.25 in compensation for their gas payment.

- *Liquidate damages for ending the tenancy early.*

There is no dispute between the parties that this tenancy was a 12-month fixed term tenancy. P.H. provided undisputed testimony that the tenancy ended pursuant to the Tenant’s notice and not because the parties agreed to end the tenancy early. I accept P.H.’s undisputed testimony and documentary evidence, and find that the Tenant ended their tenancy early, on March 15, 2023, in breach of section 45(2) of the *Act*.

Policy Guideline four states that a liquidated damages clause is a “clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement” and that the amount “agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into.”

In this case, the amount requested, one half of one month’s rent, is not extravagant and I find it to be a genuine pre-estimate of the loss at the time the contract was entered into by the parties. The Tenancy Agreement has the Landlord’s agent’s signature, along with

the agency's logo at the top of the agreement. Evidence before me indicates that the Tenant and P.H. were in communication at the start of the tenancy.

P.H. also provided evidence to show that their agency charges the Landlord an amount equivalent to, or more than, the liquidated damages being sought by the Landlord.

In the circumstances, based on the undisputed testimony of P.H., and the Landlord's documentary evidence, I am satisfied that the Tenant contravened the *Act* by ending their lease early, which caused the Landlord losses in the form of admin fees to their agent. I award the Landlord \$735.00 in liquidated damages. While I find the Landlord did incur these costs, I find it important to mention that Policy Guideline four states that "If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent."

As the Landlord was substantially successful, I award the Landlord their \$100.00 filing fee pursuant to section 72 of the *Act* and dismiss the Tenant's claim for the return of their filing fee as they were unsuccessful in their application.

I order the Landlord to retain the Tenant's \$700.00 security deposit, plus accrued interest, in the amount of \$12.50 (calculated from September 1, 2022, to November 29, 2023), in partial satisfaction of my order below.

Conclusion

I grant the Tenant \$3.25 in compensation for their gas payment and dismiss the balance of their application in its entirety. The Landlord's application is partially granted as set out below. I grant the Landlord the attached Monetary Order, which must be served to the Tenant, under the following terms:

Monetary Issue	Granted Amount
Liquidated damages.	\$735.00
Filing fee.	\$100.00
Less: security deposit, accrued interest, and \$3.25 gas compensation to the Tenant.	-\$715.75
Total Amount	\$119.25

Dated: November 29, 2023

Residential Tenancy Branch