



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC and FF

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on January 31, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant cited a tracking number that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*; however the Landlord did not appear at the hearing.

On May 07, 2014 the Tenant submitted several hydro bills to the Residential Tenancy Branch. The Tenant stated that that she submitted five bills, although I only received three of them. The Tenant was given the opportunity to resubmit the two missing bills, which she did prior to the rendering of this decision. The Tenant stated that she personally served the Landlord with the five hydro bills on May 07, 2014 and they were accepted as evidence for these proceedings.

### **Issue(s) to be Decided:**

Is the Tenant entitled to a refund for overpayment of hydro costs and/or loss of quiet enjoyment of the rental unit?

### **Background and Evidence:**

The Tenant stated that this tenancy began on October 01, 2012 and that it ended on February 17, 2014. She stated that she agreed to pay monthly rent of \$800.00 and that she understood that she was required to pay for hydro charges incurred during her tenancy.

The Tenant stated that when the tenancy began her boyfriend opened a hydro account for the rental unit. She stated that she transferred the hydro account into her name approximately six months after the tenancy started. The Tenant stated that sometime around August of 2013 she contacted BC Hydro to determine why her bills were so high and she learned that she was paying the hydro expenses for the entire residential complex, which consisted of her unit and one other residential unit.

The Tenant stated that she discussed the hydro expenses with the Landlord and he confirmed that she was paying the hydro expenses of the entire residential complex. She stated that the Landlord told her that was their agreement and he would not pay for any portion of the hydro bills.

The hydro bills submitted in evidence show that hydro charges of \$1,653.48 were incurred during the tenancy. The Tenant stated that the square footage of the upper unit is the same square footage as her unit and she would like compensation for 50% of the hydro expenses.

In the Application for Dispute Resolution the Tenant declared that she is also seeking compensation for loss of quiet enjoyment as a result of "not fixing regular maintenance and repairs". The Tenant stated that when she moved into the rental unit she was told that the bathtub would leak if she filled it with more than three inches of water. She stated that since the beginning of the tenancy the shower did not work properly. She stated that when the shower was used only half of the water came out of the shower head and half of the water came through the tap.

The Tenant stated that the problem with the shower was reported shortly after the tenancy began, but was not repaired until January 07, 2014. She stated that in the latter part of December of 2013 the hand held shower hose "exploded" and she withheld her rent until the Landlord repaired the shower.

In the Application for Dispute Resolution the Tenant declared that she is also seeking compensation for loss of quiet enjoyment because "unreasonable time given for house showing". The Tenant stated that the residential complex was for sale and that on several occasions the Landlord asked to show the rental unit without 24 hour notice. She stated that she generally told him he could not show the unit without 24 hours notice and as far as she is aware he did not enter the rental unit without proper notice.

The Tenant stated that she is also seeking compensation for loss of quiet enjoyment of her rental unit because the people in the lower suite were excessively noisy.

#### Analysis:

Section 6(b) of the *Residential Tenancy Act (Act)* stipulates that a term in a tenancy agreement is not enforceable if the term is unconscionable. Residential Tenancy Branch Policy Guidelines suggest that 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. I concur with this guideline.

On the basis of the undisputed evidence, I find that the Tenant was required to pay for hydro expenses for this entire residential complex, which included hydro expenses for a rental unit she did not occupy. I find it grossly unfair that a tenant would be required to pay for utility costs of another unit when she did not have control over how the utilities were used in the other unit.

On the basis of the undisputed evidence, I find that the requirement to pay the hydro expenses for both units was not clearly explained to the Tenant at the start of the tenancy. I therefore find that the term that requiring her to pay the hydro costs of the entire unit was unenforceable.

On the basis of the hydro bills submitted in evidence, I find that the Tenant paid at least \$1,653.48 in hydro expenses during her tenancy. On the basis of the undisputed evidence, I find that her rental unit was approximately the same size as the second suite in the residential complex and I therefore find her submission that she should only pay 50% of these costs is reasonable. I therefore find that the Landlord must pay the Tenant \$826.74, which is 50% of the charges on these hydro bills.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find it reasonable to conclude that this section requires a landlord to provide a tenant with a shower/bathtub that works properly and does not leak when it is used in a proper manner.

On the basis of the undisputed evidence, I find that the shower/bathtub in this rental unit did not work properly for the majority of the tenancy. I find that the malfunctioning shower/bathtub reduced the Tenant's quiet enjoyment of the rental unit and that she is, therefore, entitled to some compensation for that. Compensation for the loss of quiet enjoyment is highly subjective and in these circumstances I find compensation in the amount of \$300.00 is reasonable.

In determining the amount of this award I was guided, in part, by section 72(2) of the *Act*, which requires a party who is claiming compensation for damage or loss to take reasonable steps to mitigate the loss. In these circumstances I find that the Tenant could have filed an Application for Dispute Resolution long before the end of the tenancy, in which she could have requested an order requiring the Landlord to repair the shower. I therefore find that she is not entitled to compensation for the loss of the quiet enjoyment of her rental unit for the entire length of the tenancy. The \$300.00 awarded is in recognition for the first year she was required to live with the faulty shower, after which she should have filed an Application for Dispute Resolution to have the problem fixed.

Section 29(1)(a) of the *Act* authorizes a landlord to enter a rental unit at any time with the permission of the tenant. I therefore find that the Landlord did not breach the *Act* when he asked the Tenant if he could show the unit without 24 hours notice. As there is no evidence that the Landlord did enter the unit without proper authority, I find that the Tenant is not entitled to compensation for asking to show the unit without 24 hours notice.

Section 59(2)(b) of the *Act* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. As the Tenant did not explain that she is seeking compensation for being disturbed by the people in the lower suite in her Application for Dispute Resolution, I refuse to consider whether she is entitled to compensation for this alleged disturbance. In my view, it would be unfair to the Landlord to consider this claim at this hearing, as he was not properly notified of the Tenant's intent to pursue this claim.

Conclusion:

The Tenant has established a monetary claim of 1,176.74, which is comprised of \$826.74 for utilities, \$300.00 for loss of quiet enjoyment, and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia Small Claims Court 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 *Residential Tenancy Act*.

Dated: May 16, 2014

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Residential Tenancy Branch

