# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNDCT, FFT

Introduction

In this dispute, the tenant sought compensation for various matters under section 67 of the *Residential Tenancy Act* (the "Act"), including recovery of the filing fee under section 72 of the Act.

The tenant filed an application for dispute resolution on February 5, 2020 and a dispute resolution hearing was first held June 26, 2020, which was adjourned to August 14, 2020. Both parties attended the hearing, and they were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the tenant entitled to any or all of the compensation claimed?
2. Is the tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on April 15, 2018 and ended on September 30, 2019. Monthly rent was $2,000.00. A copy of the written Residential Tenancy Agreement (the "agreement") was submitted into evidence. The rental unit is a 1,000 $ft^2$ lane-way house.

The first part of the tenant's claim is for $1,530.00 for internet services agreed to in the agreement but not provided by the landlord. This is calculated at $90.00 per month multiplied by 17 months. Receipts were provided. The agreement indicates that internet is provided as part of the tenancy.

Regarding this part of the claim, the tenant testified that she asked the landlord for the internet password, but the landlord's wife did not want to share the password for privacy reasons. However, it was important for the tenant to have internet, so she ended up taking out an account for herself, for which she paid for.

In response, the landlord testified that the tenant "decided to get her own internet for security reasons." At no time did the landlord not provide the password. He stated, "it is not that I refused to give her the password, rather, she chose to get her own."

The second part of the tenant's claim is for $484.00 in hydro costs that she was charged for, even though it appears that the landlord's property was wired into the fuse box, and thus the tenant argues the landlord benefitted from the tenant's hydro. There is a photograph in evidence that shows the fuse box wiring. The tenant stated that "my rental unit was sharing the landlord's energy bill," and that "I'm paying for the landlord's energy." The tenant arrived at the $484.00 amount by estimating that the landlord used 1/3 of her energy over a period of 8.5 months.

In response, the landlord testified that the tenant is responsible for paying the hydro, and, while some of the landlord's property is stored in the garage (which the garage door opener is powered by the laneway-house's electrical system), the landlord was not otherwise parasitically benefiting from the tenant's hydro box. He commented, "the [landlord's] house did not use a single bit of the tenant's hydro. My house cannot get power from the laneway house. There are two separate meters." And, "the laneway house is a completely separate property."

In rebuttal, the tenant stated that the landlord was using ½ of the garage in the laneway house. Or, as alternatively described by the tenant, the "landlord was using most of the garage." In any event, the tenant seeks 1/3 of the cost for hydro for heating or otherwise expending energy for the garage which the landlord used.

The third part of the tenant's claim is for $4,000.00 for an alleged loss of quiet enjoyment, specifically a loss of the tenant's entitlement (or right) to reasonable privacy. She calculated this amount based on ½ of the rent multiplied by four months.
As for this aspect of the claim, the tenant testified that the landlord started the process for selling the property in June 2019. He started showing the house.

While the tenant gave verbal or text consent to the landlord to enter the rental unit in order to conduct these showings, she testified that the landlord then entered freely over the period of June to September 2019. Though the tenant did not have exact dates for

all the alleged entries, she said that the landlord entered (without proper written notice) at least twice in June, “at least two times” in July, at least three times in August, and at least seven times in September 2019. These entries were made for the purposes of showing the house to potential buyers and realtors.

In response, the landlord stressed that “she [the tenant] verbally authorized me to enter.” There was, he reiterated, a “verbal agreement” in regard to his entering into the rental unit. He recognized that he could give the tenant a written notice for each and every intended entry, but that “the tenant might not get it” in time. From September 11, 2019 and onward, however, the landlord started providing written notices to enter. In rebuttal, the tenant testified that “the last thing I wanted is to come home after work and feel unsafe,” knowing that the landlord could gain entry at any time.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

**Claim for Internet**

Section 27(1) of the Act states that

> A landlord must not terminate or restrict a service or facility if
>
> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
> (b) providing the service or facility is a material term of the tenancy agreement.

In this dispute, the tenant claims that the landlord refused to give her the internet password, thus restricting the service of the internet, which was a material term of the tenancy agreement. She thus seeks compensation equalling what she paid for Shaw internet over a period of 17 months. The landlord disputed this and said that the tenant chose to get her own internet for privacy reasons. No documentary evidence of any conversation between the parties regarding the internet was submitted into evidence.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence *over and above their oral testimony* to establish their claim.

In this case, I find that the tenant has failed to provide any evidence, beyond their oral testimony, that the landlord refused to give the tenant the internet password. As such, I cannot find that the landlord restricted the internet service.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim for internet costs.

**Claim for Hydro**

The tenant was responsible, as per the agreement, to pay for BC Hydro utilities. This she did. However, she claims that the landlord benefitted from the electricity because the garage was on the rental unit's electrical grid, and the landlord used half of the garage to store some of his personal property.

While the landlord explained that the rental unit's electricity is completely separate from the landlord's main house, in which he resides, he did not dispute that he stored some of his property in the garage. The photograph submitted by the tenant clearly shows that 7 of the fuses in the electrical box are for the garage and other items unrelated to the rental unit. Also plugged into the garage's electrical circuitry is the landlord's appliance, which appears to be a small deep freezer.

The tenancy agreement's requirement that the tenant pay for BC Hydro, while the landlord ultimately benefits from that requirement, is, I find, an unconscionable term of the tenancy agreement. Section 6(3) of the Act prohibits terms in a tenancy agreement that are unconscionable. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.

In this case, the landlord clearly took advantage of the tenant's obligation to pay for the hydro. As such, I find that there was a breach of section 6(3) of the Act. However, the tenant has not proven on a balance of probabilities that the landlord somehow used 1/3 of the hydro over a period of 8.5 months.

As the tenant has failed to prove how the landlord used exactly, or even approximately, one third of the hydro for which she paid, I award her nominal damages. "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In respect of this part of the tenant's claim, I grant her nominal damages of $1.00.

**Claim for Loss of Quiet Enjoyment and Reasonable Privacy**

Section 28 of the Act states that

> A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
> (b) freedom from unreasonable disturbance;
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29(1) of the Act states that

> (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> > (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
> > (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
> >
> > > (i) the purpose for entering, which must be reasonable;
> > >
> > > (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
> >
> > (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
> > (d) the landlord has an order of the director authorizing the entry;
> > (e) the tenant has abandoned the rental unit;
> > (f) an emergency exists and the entry is necessary to protect life or property.

In this dispute, the landlord does not deny that he did not give written notice to the tenant on any of the occurrences of him entering the rental unit. That he may have had "verbal" agreement or consent to enter the rental unit is immaterial, however: a landlord can only enter a rental unit if such entry is in full compliance with section 29 of the Act. Based on the rather undisputed fact that the landlord entered the rental unit without written notice I find that the landlord breached section 29 of the Act.

The tenant argued that her privacy was breached by the landlord's repeated, unauthorized entry into the rental unit. She seeks half of the rent for each of the four months in which the landlord unlawfully entered the rental unit. However, the tenant did not articulate or provide any meaningful argument as to why $1,000.00 a month reflects the nature of the privacy breach. In June, the landlord purportedly entered "at least" two times; this works out to $500.00 per breach. In August, conversely, the landlord entered "at least" three times, but the tenant seeks the same amount – that is, $1,000.00 – for that month. In other words, there is no cogent basis for the tenant's claim of $4,000.00.

That said, I find that the landlord breached section 29(1) of the Act, which resulted in a breach of the tenant's right to reasonable privacy under sections 28(a) and (c) of the Act. In all, the tenant has proven that the landlord unlawfully entered the rental unit a total of 14 times in those four months.

Again, having not established how the amount of $4,000.00 was calculated, the tenant is entitled to a nominal damages award. Given the aggravating factor of repeated entries into the rental unit, however, a higher nominal damage award of $50.00 per breach, for a total award of $700.00, is warranted in the circumstances.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving that the landlord breached the Act. And, as stated above, the tenant is entitled to a monetary award of $700.00.

**Claim for Application Filing Fee**

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenant was partially successful in two of the three heads of damages sought in her application, I grant her a monetary award of $66.00 for partial recovery of the filing fee.

Conclusion

I grant the tenant a monetary order in the amount of $767.00, which must be served on the landlord. Should the landlord fail to pay the tenant the amount owed, the tenant may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 18, 2020

Residential Tenancy Branch