

DECISION

Dispute Codes: MNDC and FF

Introduction

These four joined applications were brought by the tenants seeking monetary compensation in rent abatement as a result of replacement of the boiler in the rental building and consequential reduced heat for 17 days.

Issues to be Decided

This application requires a decision on whether the tenants are entitled to rent abatement and in what amount.

Background and Evidence

The rental building has six apartments with retail space below. Monthly rent for the units was \$1,177, \$1,195, \$930 and \$1,255 respectively. The tenants claim compensation of \$2,000, \$1,150, \$1,500 and \$900 respectively.

During the hearing, the parties gave evidence that the boiler replacement had resulted in it being disconnected for 17 days between November 23, 2009 and December 9, 2009 for replacement.

The tenants gave evidence that two of them had occasion to be in the boiler room in June of 2009 and observed leaking pipes which they interpreted as a sign of imminent

problems with the boiler and that the landlord was aware of the problem by that time. The landlord and agent replied that the leaks they observed were not related to the decision to replace the boiler and, in fact, remain in place.

The landlords submitted a copy of a routine inspection report of the boiler in September of 2009 which was their first indication that the boiler was nearing the end of its useful life. Rather than risk having the boiler fail at an inopportune time, the landlord began preparations for its replacement.

The job was originally scheduled to take 10 days, but when asbestos insulation was found in the system, a company with specialized experience had to be engaged for its removal delaying completion of the work.

The landlord supplied oil filled electric heaters for each of the tenants, but could only provide one each as the addition of more would have tripped electrical circuits.

One tenant with a two-year old child gave evidence that during the shut-down, temperatures fell to as low as eight degrees centigrade. Another tenant stated that he had found it necessary to relocate for a few days.

The tenants expressed the view that poor communication delayed their opportunity to prepare for the heat problem

Counsel for the tenants stated that he believed that discomfort experienced by the tenants went beyond inconvenience and that compensation should exceed a simple percentage of the per diem rent for the period in question.

The landlord's agent submitted copies of memoranda to the tenants. One dated November 20, 2009 advised them of the work, explained the provision and limitations of

the electric heaters, apologized for the inconvenience and inviting their questions or comments. Another sent on the same day advised that hot water would be shut off for two hours on November 26, 2010 and another on November 27, 2009 advised that hot water tank would be off for eight hours on November 30, 2009. A memorandum on December 2, 2009 advised of the delay of completion of the work and restoration of the boiler on December 10, 2009 as it was.

Analysis

Residential Policy Guideline 16 – 2 advises that:

“If,the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

In this matter, I find that the landlord acted prudently in avoiding the risk of the boiler failing and undertaking its replacement while it was still functioning.

While the initial notice might have been given a little earlier, I accept that the landlord awaited a firm start date before notifying tenants.

I further find that the landlord acted reasonably in providing electric heaters and that it was the limitation of the building's electrical system that prevented the operation of more adequate numbers of heaters.

However, taking into account that the tenants had full use of their units for 13 days of the month, and use of all other facilities save heat for 17 days, I find that the tenants are

entitled to compensation for the loss of facilities and comfort and set the amount at 30 percent of the monthly rent as follows:

Method of Recovery	Monthly Rent	To Return 30 % plus Filing Fee	Total
Unit 1 - Tenants moved, Monetary Order	\$1,177.00	\$353.10 + \$50.00	\$403.10
Unit 3 - May deduct from December rent	\$1,195.00	\$358.50 + \$25.00	\$383.50
Unit 4 - Tenants moved, Monetary Order	\$ 930.00	\$279.00 + \$25.00	\$304.00
Unit 5 - Tenant moved, Monetary Order	\$1,255.00	\$376.50	\$401.50

Conclusion

The tenant's of units 1, 4 and 5 copies of this decision are accompanied by Monetary Orders, enforceable through the Provincial Court of British Columbia, for \$403.10, \$304.00 and \$401.50 respectively, for service on the landlord.

The tenants of unit 3 are hereby authorized to retain \$383.50 from the rent due for December 2010.

November 22, 2010