



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, RP, O

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for an order that the landlord make repairs to the unit, site or property.

The tenant attended the conference call hearing, gave affirmed testimony, and provided evidence in advance of the hearing. Despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on January 14, 2011, the landlord did not attend the conference call hearing.

All information and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord make repairs to the unit, site or property?

Background and Evidence

This month-to-month tenancy began on November 1, 2009 and the tenant still resides in the rental unit. Rent in the amount of \$500.00 per month is payable in advance on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$250.00.

The tenant testified that the landlord resides in California, and has not provided the tenant with a phone number or contact person for emergencies related to the rental unit. He stated that when he moved into the unit, he had a chimney sweep completed and

was told by the person who completed the job that the liner is broken. Further, the flues are cracked and the wood stove should not be used. The cracks in the flues could cause smoke to enter the house and a danger of carbon monoxide poisoning exists, as well as being a fire hazard. The tenant provided a copy of the invoice showing that he paid \$315.00 for that service, and the invoice clearly states that the chimney liner is broken. The house heats with wood, and he has had to use it with extreme care. An oil furnace is in the house, but does not work at all, and the landlord advised the tenant that at the outset of the tenancy, so is well aware of it. Further, the oil tank is laying in the yard, having been blown over by the wind. The tenant has had to use space heaters for heat, and has placed one in the living room, one in the bedroom and one at the back part of the house. The breaker box consequently gets hot and the breaker switches blow due to using the space heaters, which should not happen because the space heaters are spaced throughout so as to not overload a breaker switch. He also stated that sparks appear at the plug and at the breaker box. The landlord was on the property last summer and told the tenant he would fix the furnace before going back to California, but did not have those repairs completed.

The tenant provided a copy of a hydro bill for electric charges from October 13 to December 13, 2010 in the amount of \$292.72. That bill shows that the hydro usage for the previous bill was \$217.37 and the tenant testified that bill was for the period of September to October, 2010. He contacted BC Hydro for his current bill, but was told that it is not yet ready, and the meter has not yet been read. The tenant stated that he started to use the space heaters in September due to the damp climate, and expects the next bill to be about \$320.00 plus the cost of firewood. The tenant is disabled, is not able to get his own firewood, and must pay someone else to get it for him and split it.

The tenant emailed the landlord, testifying that he asked for repairs to the unit, and provided a response by email from the landlord that states, "Cold, move out" with several exclamation marks behind that statement. Further, the tenant sent a letter to the landlord on December 4, 2010, a copy of which was provided in advance of the hearing, requesting a contact person for emergency repairs and for repairs for heat and electrical.

The tenant has claimed \$466.00 for the additional cost for him to heat the rental unit. The tenant has requested the assistance of government agencies and advocates to assist him with securing a new rental unit, but is not confident that he will secure one before spring.

Analysis

In the circumstances, I find that the tenant has failed to establish what the cost associated to heating the home would be if the wood stove were usable at all times or if the oil furnace worked. I find that the tenant accepts that heating costs are the tenant's responsibility however I have no evidence of what the hydro bill would be without the space heaters being in use and the onus is on the tenant to prove that what he has paid for hydro is more than what he would pay for oil or wood.

I do accept the evidence of the tenant that the landlord has failed to maintain the residential premises as required by the *Act*:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Clearly, the house needs heat. I do not accept that the tenant ought to use space heaters to heat the entire rental unit. I also accept that space heaters draw more electricity and would thereby increase the hydro bills. Further, the electrical system within the rental unit requires attention. I also accept the evidence of the tenant that a fire hazard exists due to the condition of the chimney and the problems with the electrical.

I find that the tenancy has been devalued by the neglect of the landlord to complete necessary repairs. I find that the loss of heat due to having no working furnace or reliable wood stove is worth half of the monthly rent in the winter months, from November to March. I further find that the electrical problems and the wood stove together have caused the tenant to fear that a fire may result.

I further find that the landlord is in breach of Section 33 of the *Residential Tenancy Act*, which states as follows:

33 (2) The landlord must post and maintain in a conspicuous place on the residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

Conclusion

For the reasons set out above, I hereby order that the landlord comply with the *Residential Tenancy Act* by providing the tenant with the name and telephone number of a person the tenant is to contact for emergency repairs. I further order that the contact person be a person that resides locally or can and will attend to emergencies in a timely manner.

I further order that the landlord comply with the *Act* by ensuring that the electrical system in the rental unit has been inspected by a certified electrician, all repairs to the electrical as recommended by the certified electrician be completed in a timely manner, and that the landlord replace the furnace or the wood stove and chimney liner in a timely manner.

I hereby grant a monetary order in favour of the tenant in the amount of \$750.00, being half of the monthly rent paid for November and December, 2010 and January, 2011. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

I further order that the tenant be permitted to reduce the rent payable from future rental payments the sum of \$250.00 per month starting with February, 2011 and continuing until the end of March, 2011, or until the house is equipped with a working furnace or a certified wood stove and new chimney liner, whichever first occurs.

I further order that the tenant be permitted to reduce the rent payable from future months commencing April 1, 2011 at the rate of \$100.00 per month until the electrical has been inspected by a certified electrician, all repairs to the electrical as recommended by the certified electrician are completed, and the furnace has been repaired or the wood stove and chimney liner have been replaced.

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: January 28, 2011.

Residential Tenancy Branch