



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF

Introduction

These two hearings dealt with the Tenants' Application for Dispute Resolution, seeking a monetary order for compensation for loss under the Act or tenancy agreement, for an order allowing the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that the first hearing in this matter was adjourned, to allow the Landlord to have a company attend the rental unit to investigate the situation. The Landlord and Tenants were allowed to submit additional evidence following this adjournment and investigation.

Issue(s) to be Decided

Are the Tenants entitled to monetary compensation under the Act or tenancy agreement?

Are the Tenants entitled to a rent reduction?

Background and Evidence

This tenancy began on May 1, 2010, with the parties entering into a written tenancy agreement. The rent was set at \$1,140.00 per month. The terms of the tenancy agreement which are relevant to this matter, include but are not limited to, that the Landlord agreed to provide heat and hot water.

On June 10, 2010, the Tenants wrote to the Landlord and explained that the temperature of the water for their showering was too low to use. The Tenants requested that the Landlord resolve this issue and asked that it be done in 30 days.

The Tenants testified that the temperature for the kitchen tap water was also too low to use normally. They testified that they had to boil water to wash their dishes on some occasions.

The Tenants submit that in October of 2010, the rental unit suffered a total loss of heat for five days. Following this, there were long periods where they had to use electric space heaters to provide adequate heat.

The Tenants submitted a history of when they lost heat in the rental unit and lacked hot water for cleaning and bathing. The evidence of the Tenants is that they did not have adequate heat or adequate hot water for use on an ongoing basis until December of 2011.

The Tenants also have evidence regarding the correspondence they had with the Landlord over these months regarding the lack of hot water and the intermittent heat. The Tenants allege the Landlord was too slow to respond to their complaints and requests for repairs.

There were also problems that arose when the Landlord did try to do repairs. For example, in November of 2010, an Agent for the Landlord tried to bleed air off through the radiator valves for the Tenants in an attempt to get heat in the rental unit. Several days later, the Tenants noticed a pool of water under their bed, which had dripped from the valve following the bleed off of air by the Agent. The water damaged a portion of the hard wood floors in the rental unit. The Tenants wanted the Landlord to record this, so they would not be held responsible for this damage at the end of the tenancy. The Tenants testified it took many months to get this acknowledgment from the Landlord.

The Tenants testified that the Landlord supplied them with electric space heaters for use in the rental unit and after several requests over several months, compensated the Tenants for the increased utility costs from using the heaters.

In evidence the Tenants submitted a copy of the relevant bylaw for the municipality where the rental unit is located. The bylaw requires that the hot water be supplied at a minimum temperature of 120 F (49 C) and a maximum of 140 F (60 C).

The Tenants provided a video recording, made in November of 2011, of them taking temperature readings at the faucet in the shower in the bathtub. The video indicates that after eight minutes of continually running the hot water, the temperature reaches a high of 101 F. The Tenants used a laser thermometer, similar to one used by the professional plumbers who came to the rental unit as requested by the Landlord, to take these readings.

The bylaw supplied by the Tenants also sets out that the heating system must be maintained and kept in good working order so as to attain a temperature of 22 C (72 F) in all rooms, measured five feet above the floor.

The Tenants testified that when they were not using the space heaters provided by the Landlord the temperature would dip to 17.5 C in the night. With the space heaters they could get temperatures up to 24 C, however, this increased the utility bills of the Tenants. After several requests, the Landlord reimbursed the Tenants for the increased cost of heating the unit.

I note the Agent for the Landlord testified during the hearing that the Landlord is still willing to do this for the Tenants.

The Tenants are requesting compensation totalling \$3,412.30 from the Landlord, comprised of \$1,912.30 for loss of heat and \$1,500.00 for insufficient hot water in the rental unit. The Tenants have provided detailed calculations for these amounts, which include no claim for loss of heat during the warmer summer months when the heat in the building was turned off.

The Agent for the Landlord testified that the Landlord has spent thousands of dollars to repair the boilers for the building and provided copies of invoices in evidence. The Agent testified that there are 14 rental units in the building and it is an older three story building. The rental unit is on the third floor.

The Agent testified that these Tenants were the only renters in the building who complained about the lack of hot water or heat in their rental unit. The Agent testified he thought the Tenants were simply trying to make money off the Landlord and characterized them as "litigious".

The Agent explained the Landlord has replaced the windows at the building and did not mind paying the Tenants for their increased hydro costs from using the space heaters.

The invoices submitted by the Landlord indicate there were many call outs by repair people to work on the boiler over the months of this tenancy. In October of 2011, the Landlord spent over \$24,000.00 to have the boiler replaced completely.

As described above, following the adjournment the Landlord hired a plumbing company to investigate the hot water situation in the rental unit. The Landlord used the same company who had installed the new boiler to do this investigation. The Tenants videotaped the workers as they took the temperature measurements, and submitted a copy of the recording.

The plumbing company reported that, "It did take some time to get the water temperature up to 137 F in the kitchen." The company recommends the Landlord install a different kitchen faucet, with separate taps for hot and cold water. Apparently the one lever water faucet valve currently installed may allow cold water in when the hot water is running.

The plumbing company states in their report that the Tenant appeared quite agitated when they were doing this testing and was "in our faces" and videotaped them the entire time they were in the rental unit.

The Tenant submitted a copy of this recording in evidence. I note that while it may be very unusual and slightly awkward for workers to be recorded while doing their work, the Tenants appear to be respectful to the workers throughout this procedure. I also note that the temperature readings the workers take are difficult to see in the video shot by the Tenant. I further note the video shows the water had to be run for long periods of time during the testing.

Furthermore, while these workers were doing their testing on the water temperature, they had three different faucets running; the kitchen sink, the bathtub and the bathroom sink.

The Tenants testified that following the time the workers attended their rental unit for the investigation, the temperature of the water and the heat in the unit has been proper. The Tenants were satisfied that as of December 20, 2011, they had adequate hot water and heat in the rental unit.

The Tenants questioned if some adjustment had been made to the boilers at the time the workers attended the rental unit. The Agent for the Landlord testified he did not know if this had occurred, but he did not believe this was the case.

The Agent for the Landlord testified that over the months the Landlord tried to address the problems as quickly as possible, however, the repairs were costly and did take time to complete through no fault of the Landlord. The Agent explained that the time to make these repairs was extended because they could not change the old boiler out last winter, as it required the entire system to be shut down. When the Landlord decided to replace the boilers plans had to be made, permits had to be acquired and costing out had to be down. The Agent testified there were many meetings and certain rebates had to be determined and that this all took time as replacing a boiler is a “big deal” and a lengthy process. The Agent explained that replacing the boiler was not a snap decision for the Landlord.

At the end of the hearing, the Tenants thanked the Landlord for providing them with the space heaters and reimbursing them for their increased electric bills.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Landlord has breached section 32 of the Act, and has breached the tenancy agreement by failing to provide heat and hot water, as required as a term of the contract.

Under section 32 of the Act, the Landlord must maintain the residential property in a state of repair that complies with the health, safety and housing standards required by law. I accept the evidence of the Tenants that the Landlord has failed to comply with the applicable bylaws to provide hot water at the required temperatures and failed to provide adequate heat to keep the rental unit at the required temperature.

I do not accept the allegations of the Landlord that these Tenants were litigious or simply trying to make a “cash grab” from the Landlord. I found the Tenants provided honest and forthright testimony and were straightforward in their claims and evidence. I do not find they exaggerated their claims or failed to mitigate their losses. I did not find they interfered with or were disrespectful to the workers attending the rental unit. As stated above, while it must have been unusual and awkward for them to be videotaped doing their work, I do not find the Tenants mistreated these workers.

While it is apparent from the evidence that the Landlord did take significant time to address the issues raised by the Tenants, I do not find that the Landlord was intentionally negligent here.

I find that the Landlord breached section 32 of the Act by failing to provide what is required under the law, and breached the contract between the parties by failing to provide what was required in the tenancy agreement.

I further find that the Landlord took several months to address the issues and make adequate repairs. The Landlord and the Agents should have communicated more effectively with these Tenants as it appears they often went several weeks and even months to get answers to some of their questions.

I find that the breaches of the Act and tenancy agreement by the Landlord caused the Tenants to suffer a loss.

Section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the Tenants have established that in regard to heat in the rental unit, they suffered a loss for 11 months from October 2010 to December 2011. I allow them the pro-rated amount they request for two months of \$112.30, and award them \$150.00 dollars per month for the remaining nine months, for a total of \$1,462.30.

I find that the Tenants have established that in regard to hot water in the rental unit, they suffered a loss for 15 months from October 2010 to December 2011. I allow them \$100.00 a month for loss of hot water, for a total of \$1,500.00.

Therefore, I find that the Tenants have established a total claim of \$3,012.30, comprised of the above described amounts, plus the \$50.00 filing fee for the Application. I order the Landlord to pay the Tenants the sum of **\$3,012.30**.

I further order that the Tenants may deduct the sum of \$3,012.30 from future payments of rent to the Landlord, until they have recouped this amount.

The Tenants testified that they are currently satisfied that the Landlord is complying with the bylaws, Act and tenancy agreement, I therefore I dismiss their present claim for an ongoing rent reduction.

Lastly, I order that the Landlord change the kitchen faucet to single taps, as suggested by their plumbing company, no later than January 31, 2012.

This decision is final and binding on the parties, except as otherwise provided for under the Act, and 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: December 23, 2011.

Residential Tenancy Branch