Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RP, PSF, RR, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenants confirmed that the landlord handed them a 1 Month Notice to End Tenancy (the 1 Month Notice) on March 22, 2012. The landlord confirmed that he received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on March 23, 2012. I am satisfied that the parties served these documents to one another and their evidence packages in accordance with the *Act*.

At the hearing, the parties agreed that the tenants yielded vacant possession of the rental premises to the landlord by March 31, 2012. As such, the tenants testified that there was no need for them to pursue a number of the remedies sought in their application when they were still living in the rental unit. They withdrew their applications for emergency repairs, repairs, an order to provide services or facilities required by law and an order to the landlord to comply with the *Act*.

The landlord testified that he had filed his own application for dispute resolution the day before this hearing. Although he said that his application for a monetary award of $4,471.73 for the repair of damage arising out of this tenancy and the retention of the tenants' pet damage and security deposits was scheduled for June 5, 2012, he had not served notice of his application to the tenants. Due to the timing of the landlord's application for dispute resolution and the lack of service of his application for dispute resolution to the tenants, I considered only the tenants' application. Their application can be considered separately from the landlord's application and does not involve the same issues.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for losses arising out of this tenancy? Are the tenants entitled to a monetary award for the loss in value of their tenancy agreement due to the landlord's failure to provide services or facilities that the tenants expected to receive as part of that tenancy agreement? Are the tenants entitled to obtain the recovery of their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous invoices, letters, texts and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

This periodic tenancy for the main floor of a two unit rental home commenced on April 1, 2010. Monthly rent was set at $1,150.00, payable on the first of each month. The tenants were responsible for paying all utilities, including heat, hydro, water, sewage, cable and phone. According to the terms of their tenancy agreement, the landlord was to pay $100.00 towards their utility costs if the lower unit was occupied. The landlord retains the tenants' $575.00 security deposit and $100.00 pet damage deposit paid on or about April 1, 2010.

The parties agreed that this tenancy ended shortly after the municipality inspected the rental property and issued a notice to the landlord requiring the entire property to be vacated within 7 days due to the landlord's lack of compliance with municipal bylaws. The landlord confirmed that he had done renovations without seeking a permit on an unauthorized second rental unit in the rental property. The parties agreed that the landlord issued a 1 Month Notice to End Tenancy (the 1 Month Notice) to the tenants the day after the municipality sent the 7 day notice to vacate the entire property. Although the effective date on the landlord's 1 Month Notice was April 30, 2012, the landlord offered the tenants one month's rent if they agreed to vacate the rental unit by

the end of March 2012, in order to comply with the municipality's order. The tenants rejected the landlord's offer as he required them to sign a full release from any further claim against him if they accepted his $1,150.00 payment to compensate them for the short notice afforded them. At the hearing, the landlord confirmed that he was still willing to compensate them for one month's rent for April 2012 or for their motel costs if they could not find another rental unit during April 2012.

At the hearing, the tenants said that they are currently staying with friends and have had to put their belongings in storage while they try to find another suitable rental unit.

The tenants applied for a monetary award of $10,000.00. This amount included the following:

Item	**Amount**
Reimbursement of Moving Expenses	$1,025.74
Disconnection of Internet, Phone, Cable and Loss of 3 Year Contract Recently Signed with Telus	864.00
Wages from Loss of Work for both Tenants	1,807.60
Mail Transfer and Rental of PO Box	126.40
First Month's Rent and Damage Deposit for New Location	1,800.00
Return of Damage Deposit	575.00
Recovery of Filing Fee for this application	100.00
Total of Above Listed Items	**$6,298.74**

In addition, the tenants requested reimbursement for the following:

- *Reimbursement for oil and hydro above what the average amount was for the 15 months that we were without proper heat;*
- *A fair rebate on the portion of our rent for the last 15 months because we did not have full use of the facilities and services as rented;*
- *Fair compensation for the trauma and inconvenience we have to go through because of this eviction, we weren't responsible for this nor did we wish to move at this time; and*
- *Any other compensation we may be eligible for pertaining to this claim.*

The landlord did not deny that the tenants incurred extra costs by heating their rental unit with two electric heaters he provided to them and by using their stove and oven to heat the premises. He testified that he had a furnace repair company inspect the

furnace on December 2, 2010 after the tenants complained about their heating costs and a lack of adequate heat. He submitted an invoice for that inspection and maintained that the furnace inspector did not find anything wrong with the oil furnace other than a pump which was replaced. The landlord testified that he was told by the furnace inspector that the problem with the oil furnace was that the tenants had not filled the oil tank. He said that the tenants refused to re-fill the oil tank and that this was the source of their extra heating costs for the remainder of their tenancy. He noted that the tenancy agreement required the tenants to pay all utility costs including heating costs.

In the landlord's written evidence and at the hearing, the landlord maintained that the tenants had submitted only one valid receipt for oil purchased for the furnace during their tenancy. The tenants responded that they had mistakenly failed to separate the two oil bills they paid on November 23, 2010 for $302.83 and December 23, 2010 for $300.00. They said that they had sent both copies of the November 23, 2010 bill to the Residential Tenancy Branch (RTB) and both copies of the December 23, 2010 bill to the landlord. I confirmed at the hearing that I had copies of both the November and December 2010 bills. The tenants clearly paid $302.83 for oil for the oil tank nine days before the furnace inspector attended the premises on December 2, 2010.

After the landlord's repairs to the fuel pump and a new water circulator failed to rectify the problems with the furnace, the tenants confirmed that they refused to incur further costs to fill the oil tank as they considered the furnace to be malfunctioning. They testified that the furnace inspector told them that the burner plate was bad and needed replacement. They testified that the landlord recognized that the furnace was not working properly and bought a used blue furnace. The landlord confirmed that he bought this furnace in the summer of 2011 but did not commence installing it until November 2, 2011 when he commenced extensive renovations to the lower unit in the rental property. He testified that the used blue furnace was installed and functioning by the end of February 2012. The landlord admitted that he did not apply for permits to conduct any of the renovation work and renovated the rental property illegally. He said that the municipal inspection found that the electrical system was not properly grounded, there were fire prevention problems with the work that was done and that the municipality refused to allow him to have the premises occupied until such time as he applied for permits and conducted work in accordance with the municipal requirements.

The tenants also raised a number of other concerns about this tenancy, including but not limited to the disruption caused by the landlord's renovations, the portion of the shared garage that they were restricted to use, access to parking in the driveway, problems with unsafe electrical wiring and mould in the rental unit.

Analysis

Section 7(1) of the *Act* establishes that a landlord or a tenant who does not comply with the *Act*, regulations or their tenancy agreement must compensate the other for damage or loss that results from that non-compliance.

Section 32(1) of the *Act* places the following obligation on the landlord to repair and maintain rental units:

> ***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...*

Section 65(1) of the *Act* reads in part as follows:

> ***65*** *(1) Without limiting the general authority in section 62 (3)* [director's authority respecting dispute resolution proceedings]*, if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:...*
>
> *(c) that any money paid by a tenant to a landlord must be*
>
> *(i) repaid to the tenant,...*
>
> *(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;*

Section 28 of the *Act* guarantees tenants' right to quiet enjoyment of their premises:

> ***28*** *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.*

In this case, the landlord is correct in noting that the Residential Tenancy Agreement (the Agreement) between the parties made the tenants responsible for the payment of all utilities, subject to a $100.00 reimbursement from the landlord for periods when the lower rental unit was occupied. The landlord's reimbursement of $100.00 for those periods when the lower rental unit was occupied is not at issue. When the tenants entered into the Agreement, they anticipated that they would be heating the premises using a functioning oil furnace. There is evidence that they made payments on November 23, 2010 and December 23, 2010 to purchase oil for the oil furnace. I accept that the landlord did retain a furnace inspector in early December 2010 to conduct a professional inspection of the tenants' concerns that the furnace was not working properly. However, I find that the result of that inspection and the relatively minimal repairs undertaken by the landlord did not provide the tenants with the properly functioning source of oil heat that they understood they would be receiving when they entered into the Agreement. Since the tenants did incur a $300.00 cost for filling the oil tank on December 23, 2010, I reject the landlord's assertion that the oil furnace did not function because the tenants failed to fill it with oil.

On a balance of probabilities after examining the oral and written evidence, I find it more likely than not that the landlord's failure to maintain or replace the existing heating system in the property led to the tenants' reliance on poor and expensive substitutes for a properly functioning heating system. The parties agreed that the landlord provided them with two space heaters. However, the tenants' use of these heaters was limited as the deficient electrical system could not handle both of the heaters being used simultaneously. I examined photographs that showed that the heaters were connected by wiring that could present a safety hazard. The tenants also advised the landlord that they were using the oven and stove as a source of heat for the rental unit, again a potential safety hazard.

Although both parties provided some written evidence regarding the tenants' claim for their increased hydro costs incurred during this tenancy, assigning an exact figure for the increased hydro costs that the tenants received for their tenancy is an imprecise process. Over a tenancy of this length, hydro costs vary, as do usage patterns and the extent of hydro consumption by other tenants and the landlord in the rental property. In

addition, not all of the hydro costs were attributed to the landlord's failure to provide a functioning primary source of heat for the rental unit.

In considering the tenants' claim for reimbursement for their extra heating costs, I find that the tenants are not entitled to a reduction in rent until January 2011, the month after the landlord's furnace inspector examined the tenants' concerns about the oil furnace. By January 2011, I find that the landlord should have been well aware that the primary heating system was not working as it was supposed to and was resulting in very high heating costs for the tenants. I also find that the landlord's purchase of a used furnace to replace the existing heating system is a reflection of his realization that the heating system was not operating properly. His delay in commencing installation of the used furnace until November 2011, and his lengthy four-month period of installation of the used furnace as part of the unauthorized and illegal renovations to the rental property also convinces me that the landlord did not fulfill his obligations under section 32(1) of the *Act*.

Beyond the pure financial costs incurred in the tenants' payment for a more expensive source of heat by January 2011, I find that the tenants were forced to live in unsafe, hazardous and difficult conditions despite repeatedly raising their concerns about the landlord's failure to provide them with a properly functioning primary heating system. I find that these conditions warrant an allowance for the tenant's loss of quiet enjoyment of the premises and for a loss in value of their tenancy.

For those months when I would expect the primary heating system to be needed, I find that the tenants are entitled to a reduction in their rent of $200.00 per month. These reductions apply to the five months from January 2011 until May 2011, and for the six months from October 2011 until the end of their tenancy in March 2012. For June, July, August and September 2011, I find that there was less need for a functioning primary heating system. As such, I find that the tenants are entitled to a reduced monthly reduction of $50.00 per month for these four months.

I have also considered the tenants' application for a monetary award for the short notice that they were provided by the landlord to end their tenancy. As the tenants testified that they had not yet found rental accommodations and were staying with friends, I find that they have not demonstrated their entitlement to the monetary award of $1,800.00 they were seeking for their first month's rent at a new location and payment of their security deposit. However, I find that the sudden end to this tenancy was a direct result of the landlord's actions in conducting illegal renovations to the property which resulted in the municipal order to vacate the premises for safety reasons. The tenants' undisputed evidence that they decided to enter into a new contract with Telus at the

rental unit shortly before the landlord's issuance of the 1 Month Notice demonstrates that they had every intention of staying in the rental unit once the landlord's renovations had been completed. This decision was no doubt based on the landlord's installation of a functioning furnace that would reduce their monthly heating and hydro costs. For this reason and because the landlord wanted the tenants to vacate the rental unit in order to comply with the municipal order, I find that the tenants are entitled to a monetary award of $950.00, the amount of the reduced monthly rent that the tenants would have paid for April 2012 in accordance with this decision (i.e., $1,150.00 - $200.00 = $950.00).

At the hearing, the male tenant entered undisputed oral testimony that the actual amount of the tenants' claim for moving costs was $1,066.00 and not the $1,025.74 stated in their written evidence. Based on this undisputed testimony and my finding that the tenants' unexpected move was precipitated by the landlord's failure to comply with the *Act*, I find that the tenants are entitled to a monetary award of $1,066.00 to compensate them for their moving costs.

I allow the tenants' claim for reimbursement for their undisputed costs of $126.40 for the redirection of their mail and for obtaining a postal box. Based on the sudden circumstances that led to the end of this tenancy, I find that the tenants would have reasonably incurred these costs.

I have given the tenants' claim for disconnection of services, including their entering into a long-term T contract that they could not recover, careful consideration. I dismiss this aspect of the tenant's claim without leave to reapply as I am not satisfied that the tenants have provided sufficient information to substantiate this portion of their claim or their entitlement to a monetary award from the landlord for these items. In their written evidence, they maintained that the new house they are moving into "has internet and cable but we still have payout the contract." On this point, I find that the tenants' apparent intention to enter into their new tenancy did not mitigate the landlord's losses for their T contract in accordance with section 7(2) of the *Act*. I find that the landlord should not become responsible for this cost because the tenants chose to rent a home that already had internet and cable provided by some other service provider.

I also dismiss the tenants' application for a monetary award for their loss of wages without leave to reapply. I find that they have not provided sufficient information to document this portion of their claim or to demonstrate why they would be entitled to a monetary award against the landlord for this item.

I dismiss the remainder of the tenants' application for a monetary award without leave to reapply as I find insufficient basis that would entitle them to a further reduction in rent for any of these items beyond those reductions set out earlier in this decision.

In their application for dispute resolution, the tenants have not applied to recover their pet damage and security deposits. As noted at the commencement of this decision, the landlord has apparently submitted his own application to retain these deposits, an application that will be heard in early June 2012. For that reason, I make no decision with respect to the tenants' pet damage and security deposits.

As the tenants have been successful in their application, I find that they are entitled to recover their $100.00 filing fee from the landlord.

Conclusion

I find that the tenants are entitled to a monetary Order in the following terms:

Item	**Amount**
Reduction in Rent January 2011 – May 2011 (5 months @ $200.00 = $1,000.00)	$1,000.00
Reduction in Rent June 2011 – September 2011 (4 months @ $50.00 = $200.00)	200.00
Reduction in Rent October 2011 – March 2012 (6 months @ $200.00 = $1,200.00)	1,200.00
Reimbursement of Moving Expenses	1,066.00
Mail Transfer and Rental of PO Box	126.40
Monetary Award Regarding Notice for End to Tenancy	950.00
Recovery of Filing Fee for this application	100.00
Total Monetary Order	**$4,642.40**

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The tenants' applications for emergency repairs, repairs, an order to provide services or facilities required by law, and an order to the landlord to comply with the *Act* are withdrawn. The remainder of the tenants' application is dismissed without leave to reapply.

As noted above, I have not considered the pet damage or the security deposit for this tenancy as there is an outstanding application from the landlord to retain these deposits and the tenants did not apply to recover this amount as part of their application for dispute resolution.

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: April 12, 2012

Residential Tenancy Branch