# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNR MNR MNDC MNSD OLC ERP RP PSF LRE RR O FF

Preliminary Issues

The Tenants filed their initially application on December 9, 2013, seeking a monetary order of $280.15 and for various Orders for Landlords' actions sought. They amended their application on January 6, 2014 and January 20, 2014 adding requests for: reduced rent, to cancel a Notice to end tenancy for unpaid rent, and for the return of their security and pet deposit.

The Tenants testified that since filing their application(s) the landlord/tenant relationship became adversarial and confrontational and they were served with a 10 Day eviction Notice on January 2, 2014; so they had to vacate the rental unit. They returned on January 29, 2014 to take the garbage to the street for garbage pickup day, and then left the keys at the local police station. The Tenants told the Landlords the address of the police station during this proceeding so they could pick up the keys and regain possession as of January 30, 2014.

Given the circumstances listed above, I find the majority of the Tenants' claims are now moot, as this tenancy has ended. Furthermore, I found the Tenant's request for their security and pet deposit was pre-mature; therefore, that claim was dismissed with leave to reapply.

The Tenants affirmed that they served the Landlords with their evidence by leaving it the Landlord's mailing on January 22, 2014. This evidence included a monetary order worksheet listing a claim of $2,162.38.

Section 59(2) of the Act stipulates that an application for dispute resolution must be in the applicable form and must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

Based on the above, I find the Tenants had not amended or served an application to the Landlords for a monetary claim of $2,162.38; and therefore, I declined to hear matters pertaining to a $2,162.38 monetary claim. The Tenants have liberty to reapply if they wish to proceed with that claim. I proceeded to hear the matters pertaining to the $280.15 monetary claim.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants to obtain a Monetary Order for: cost of emergency repairs, money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from Landlords for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure.

Upon review of the service of evidence the Landlords confirmed receipt of all of the Tenants' evidence. The Tenants however denied receiving all of the Landlord's evidence. Specifically, they argued they did not receive a copy of the typed statement signed by K.C.; the hand written note signed by the Landlord P.S.; and they did not receive a copy of the Landlord's driving abstract.

Not serving the other party evidence is a contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure.* Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Tenants have not received the above mentioned evidence from the Landlords, I find that that evidence cannot be considered in my decision. I did however consider the rest of the Landlords' evidence and the Landlords' testimony.

Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Are the Tenant's entitled to a Monetary Order?

Background and Evidence

The Tenants testified that they entered into a written tenancy agreement with the previous owners that began on January 15, 2006, and switched to a month to month tenancy after one year. They were allowed to occupy the rental unit early on January 7, 2006. Rent initially began at $1,050.00 per month and was subsequently raised to $1,080.00 in August 2010. On January 6, 2006 they paid $525.00 as the security deposit and $525.00 as the pet deposit. The previous owner did not complete a move in condition inspection report form. The current Landlords purchased the property in 2013 and their original tenancy continued.

The Landlords confirmed that they purchased the property in April 2013 and that the document they received from the previous owner indicates that the deposits were paid on January 15, 2006.

The Tenants submitted that the furnace has had problems in the past and it began having problems again in December 2013. They attempted to contact the Landlords on several occasions and when they failed to return their calls they called a heating company who attended on December 4, 2013 and who indicated that the furnace should be replaced. The Tenants are seeking to recover the $104.95 they paid the service company.

The Tenants said they were concerned for their safety, given the state of the current furnace and did not know when the Landlords would have a new system installed. They requested that the Landlords provide them with a carbon monoxide detector however the Landlords refused. The Tenants stated that because their furnace was a natural gas furnace they could not reside in the unit without a carbon monoxide detector as it would be a health and safety risk especially knowing that the existing furnace was not working properly; so they purchased the detector themselves, and have left it in the rental unit. They are seeking to recover the $49.99 paid for the detector.

The Tenants pointed to their evidence to a document which they state the Landlords tried to force them to sign. This document indicates that if the Landlords are not able to fix urgent repairs right away they would not be responsible to provide alternative

accommodations or any other expenses. The Tenants refused to sign this document and told the Landlords they needed to have the furnace fixed right away.

The Tenants stated that the Landlords attended the rental unit December 6, 2013, and finally agreed to have their service company install a new furnace. That company attended on December 7, 2013, to complete the installation and were at the unit from 9:00 a.m. to 4:00 p.m. When they left at 4:00 p.m. the furnace was blowing cold air, which concerned the Tenants. They were told it would take some time to start working and to monitor the situation.

The heating company had to return again at 8:30 p.m. that night and again at 10:30 p.m. when they determined that the regulator and condensation trap were installed backwards. The Landlords brought them a small space heater which they argued could not heat the size of their home. The Tenants indicated that by 11:00 p.m. the house was still too cold so they took their two small children (ages 1 year and 6 years) to a hotel for the evening. They are seeking to recover the cost of the hotel cost which is $125.35. They pointed to the hotel receipt which clearly indicates the time of check in and argued that this was not a vacation stay; it was simply a place to be warm. When they returned to the property on December 8, 2013 the house was still only 67 degrees.

The Landlords testified and initially denied that they requested the Tenants signed the letter to deny alternate accommodates. They later changed their testimony to confirm they had prepared that letter and they did ask the Tenants to sign it.

The Landlords argued that the furnace was not broken because their service guy told them it was just the transmission that had broken and he could repair it if he could find the parts. They decided to hire a plumbing and heating company (D.P.H.) to install a new furnace. D.P.H. attended at 6:00 p.m. on December 5, 2013, and again December 6, 2013.

The Landlords said that D.P.H. attended the unit to install the new furnace on December 7, 2013. The Landlords argued that it was not D.P.H. who returned that evening at 8:30 it was the male Landlord and his brother and that they brought a heater with them to give to the Tenants but the Tenants just laughed at them. D.P.H. attended later on December 7, 2013, between 9:00 and 10:00 p.m. to fix the furnace.

The Landlords stated that they should not have to pay for the carbon monoxide detector or the hotel room because the Tenants did not ask their permission before incurring those costs.

Analysis

Section 33(1)(c)(iii) defines emergency repairs as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing the primary heating system.

After careful consideration of the foregoing, I find the matters relating to the furnace breakdown between December 5, 2013 and December 8, 2013 to be considered emergency repairs as defined by section 33(1)(c)(iii) of the Act.

Section 33(3) of the Act stipulates that a tenant may have emergency repairs made only when emergency repairs are needed; the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; and following those attempts, the tenant has given the landlord reasonable time to make the repairs.

In this case I accept the evidence that the Tenants acted in accordance with the Act by attempting to contact the Landlords and when assistance was not immediately forthcoming they initiated and paid for the services of a furnace repair company and purchased a carbon monoxide monitor to ensure their safety. Accordingly, I award the Tenants compensation for the furnace service call and the carbon monoxide monitor in the amount of **$154.94** ($104.95 + $49.99).

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the furnace would deteriorate occupant comfort and the long term condition of the building.

I accept the landlord's evidence and testimony that they took steps to have the new furnace working properly. That being said, the fact remains that by 10:30 p.m. on December 7, 2013 the furnace was still blowing cold air.

Residential Tenancy Policy Guideline # 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs."

Based on the above, I find that the Tenants took reasonable action by staying at a hotel in order to provide their young children a warm place to sleep on the night of December 7, 2013. Accordingly, I approve the Tenants' claim for the hotel cost of **$125.35**.

The Tenants have been successful with their application; therefore I award recovery of the **$50.00** filing fee

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **$330.29** ($154.94 + $125.35 + $50.00). This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 31, 2014

Residential Tenancy Branch