



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on August 14, 2014, to obtain a Monetary Order: to keep all or part of the security deposit; for 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 the Tenants for this application.

The hearing was conducted via teleconference and was attended by two Agents for the Landlord and both Tenants. The Landlord is listed as a Limited Company and was represented by two Agents (hereinafter referred to as Landlords). The Tenants' submissions were primarily provided by the female Tenant, despite both Tenants being present at the hearing. Based on the foregoing, for the remainder of this decision, terms or references to the Landlords and Tenants importing the singular shall include the plural and vice versa.

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. 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.

Each person gave affirmed testimony and confirmed receipt of evidence served by the Landlords. The Tenants did not submit documentary evidence in response to the Landlord's application.

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

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

It was undisputed that the Tenants entered into a fixed term tenancy that began on December 1, 2012 which switched to a month to month tenancy after November 30, 2012. Rent of \$1,300.00 was due on or before the first of each month and on November 1, 2012 the Tenants paid \$650.00 as the security deposit. The parties attended the move in condition inspection on November 23, 2012 and the move out condition inspection on July 29, 2014. A copy of the condition inspection report form was submitted in the Landlord's evidence and was signed by both parties.

The Landlord testified that prior to the start of the tenancy the owner paid to fill the furnace oil tank in the amount of \$328.14, as provided by the invoice dated November 23, 2012, submitted in their evidence. The Landlord submitted that the Tenants were required to leave the oil tank full when they moved out; however, they left it empty. The Landlord said that when he asked the Tenants to fill the tank they refused.

The Landlord now claims \$1,096.14 which was the cost to fill the tank with oil, as per the invoice dated August 13, 2014, provided in their evidence. The Landlord noted that the tank required 872 litres of oil which proves the tank was left empty.

The Tenants disputed the amount claimed by the Landlord and argued that when they moved into the rental unit the furnace did not work. They stated that the previous manager told them that the furnace wasn't working because it needed oil so she put \$300.00 of oil into the tank and were told that they would be required to leave \$300.00 in the tank when they moved out. They argued that did not use the furnace to heat the house as they used wood in the two wood stoves. The Tenant stated that because they did not use the furnace they should not have to pay for oil. Then she stated that if they are required to pay for oil they would only agree to pay for \$300.00 of oil, which is what the previous manager told them.

In closing, the Landlord argued that the November 23, 2012 invoice shows that the tank was filled and does not show that a flat rate amount of oil was delivered. He submitted that oil delivery companies are very experienced and provide accurate amounts of oil, so if \$300.00 of oil was ordered, that is all that would have been provided. The 2012 invoice show an uneven dollar amount which is indicative of having the delivery truck fill the tank. The Landlord stated that he spoke with the owner directly himself and confirmed that the order back in 2012 was to fill the tank and not a flat rate order of \$300.00.

The Landlord argued that at the time of move out the Tenants would only agree to a deduction of \$300.00 from their security deposit for the oil, and refused to pay for the tank to be filled, as per the copy of the Security Deposit Refund sheet which was

provided in evidence. That document was signed by Tenant and the Landlord and states:

Oil has not been dipped

Home is clean no damage

We will check to see if the oil tank started full [my bolding added]

Below the signature block it has a section that states:

I agree to allow the damage deposit for the above address to be used to pay:

The Tenant's name, forwarding address, and the following statement were written:

Reduce by 300.00 for oil – August 6, 2014

The Landlord stated that they filed their claim to recover the cost remaining costs to fill the oil tank, once they confirmed that the tank had been full at the beginning.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Residential Tenancy Policy Guideline # 1 provides that a tenant **must** leave water and oil tanks in the condition that he or she found them at the start of the tenancy e.g. half full.

Section 67 of the Residential Tenancy 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.

Upon review of the oil invoice dated November 23, 2012, I accept the Landlord's submission that the oil company filled the tank at the outset of this tenancy, as the oil company delivered an amount of oil that was not an exact number of litres (i.e. 100 litres) and was not an amount that would equal a flat rate amount of \$300.00.

The undisputed evidence was that the tenancy agreement stipulated that heat was not included in the rent and the Landlords advised the Tenants that they would be checking to determine if the oil tank had been full at the beginning of the tenancy. I do not accept the Tenants' submission that they never used the furnace, as the evidence clearly confirms that the furnace had to have been used, because the oil tank was left empty at the end of the tenancy. In absence of any documentary evidence to support the Tenants' submission that they were told they only had to pay \$300.00 for oil at the end

of their tenancy, I find in favor of the Landlord's claim and I award them compensation to fill the oil tank in the amount of **\$1,096.54**, pursuant to section 67 of the Act.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants; security deposit plus interest as follows:

| | |
|--|-------------------------|
| Bio heat Oil | \$1,096.54 |
| Filing Fee | <u>50.00</u> |
| SUBTOTAL | \$1,146.54 |
| LESS: Security Deposit \$650.00 + Interest 0.00 | <u>-650.00</u> |
| Offset amount due to the Landlord | <u>\$ 496.54</u> |

Conclusion

The Landlord has been awarded a Monetary Order for **\$496.54**. 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: March 18, 2015

Residential Tenancy Branch

