Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, ERP, RP, PSF, LRE, FF, O

Introduction
This hearing dealt with the tenant's application for a variety of orders including an order setting a 10 Day Notice to End Tenancy for Non-Payment of Rent, a repair order, a monetary order and an order limiting the landlord's right of entry.

The hearing was originally set for February 2, 2015. It was adjourned, for the reasons set out in the Interim Decision, to February 12.

On February 12 the landlord and the tenant appeared. At that time the tenant expressed her unhappiness that the adjournment had been granted, that she had not been granted a default decision, and that she had to go ahead with a hearing. She then asked for an adjournment so that I would have an opportunity to consider some late evidence she had filed before hearing the oral testimony.

I explained that I would not make any decision before considering her additional evidence but that I wanted to hear as much evidence as I could at this time. In deciding to proceed on February 12 one of the factors I considered was the tenant's previously expressed desire to have the matter heard and an order made as soon as possible. I then proceeded to hear the tenant's testimony. She did not finish her oral testimony until just before the end of the three hours that had been set aside for the continuation. The hearing was adjourned to March 6 at 1:00 pm; a date and time convenient for all.

The hearing was completed on March 6. I heard the landlord's testimony and the tenant's rebuttal evidence. The parties have another hearing in progress that appears to cover some of the same issues as those raised in this application and it appeared that they were having some difficulty keeping the two proceedings separated.

Issue(s) to be Decided

- Is the 10 Day Notice to End Tenancy dated January 5, 2015 valid?
- Is the tenant entitled to a monetary order and, if so, in what amount?
- Should a repair order be made and, if so, on what terms?
- Should the landlord's right of entry be restricted and, if so, on what terms?

Background and Evidence
This month-to-month tenancy commenced December 1, 2014. The monthly rent of $1500.00 is due on the first day of the month. The tenant paid a security deposit of $750.00. A written tenancy agreement was signed on or about November 4, 2014 but a copy was not provided to the tenant until much later. A move-in inspection was not conducted and a move-in condition inspection report was not completed.

The rental unit is the upper two levels of a house. There is a bedroom and a bathroom on the main level and three bedrooms and 1 ½ bathrooms upstairs. The landlord lived in this house from 2000 to 2012 until they moved into a new home which they had built just four houses from the rental unit.

There is a separate rental unit in the lower level. The furnace and hot water tank are located in this unit. The downstairs unit has electric baseboard heaters; the upstairs does not.

The tenancy agreement provides that the BC Hydro and Fortis accounts would be placed in the tenant's name and the landlord would pay of 1/3 of each. There is one meter for both rental units.

The tenant testified that before she moved in she received estimates from the two utility companies and was told that the equalized bill for BC Hydro would be about $217.00/month and the equalized bill for Fortis would be about $46.00/month.

The tenant testified that when she moved into the rental unit it was not as clean as she expected it to be and there were numerous small repairs required. She testified that she has expended considerable time and effort cleaning and fixing, although she did not provide any details of the actual number of hours worked. Her son and her friends submitted letters corroborating her description of the rental unit. The tenant also filed a number of photographs taken shortly after she moved in.

The landlord submitted a letter from a person who said she was the previous tenant of the unit; that she cleaned the unit thoroughly; and that she received the full security deposit from the landlord. The tenant argued that the letter was not genuine.

The tenant claimed $1000.00 for cleaning. This is based on the information given to her by a friend, who works with a cleaning company. He told her that if they had had a crew clean this house they would have charged $1000.00.

According to the tenant when, at the start of the tenancy, she asked the landlord about storage he told her "we can make room". It was only after the start of the tenancy that she found out that the garage was reserved for the landlord's use and that he had two freezers in there, both plugged in.

When the tenant moved in there was a lot of stuff in the carport, which the landlord told her was his. She sorted out the garbage and recycling and disposed of it. The other items were stored against the wall.

While she was working in the car port she smelled gas. This happened twice so she called Fortis. Fortis attended on Saturday, December 20 in the morning. They told her the exhaust pipe from the furnace had two leaks, was not to code, and was three feet two short. Fortis gave her a tag to give to the landlord. The tenant extended the exhaust by attaching a length of pipe with duct tape. Eventually, the landlord's son and two other men came over. They looked at the tenant's handiwork and according to the tenant, left it in place. The landlord says that if the situation were unsafe the gas company would have shut everything down.

The tenant says that in response to an inquiry about the furnace one of the men told her he was only a gas fitter and he did not know anything about furnaces.

The tenant says she was exposed to carbon monoxide for two days and that she reacted to it.

The tenant says she experienced difficulty with the heat right from the beginning of the tenancy. On December 6 the landlord's son replaced the digital thermostat with a simpler analog thermostat. The tenant cleaned the furnace filters, which were very dirty. The issue was that the heat would blast out for a few minutes and then the furnace would shut off, often for very long periods of time.

On Christmas Day the furnace was not working. The tenant sent the landlord a text about the situation and in the early afternoon he attended at the rental unit with the same man who the tenant says just a few days previously had told her he was just a gas fitter. They went down to the furnace. After an hour or so the landlord came back with a part in his hand and said it was the ignition switch.

The heat went off again about an hour later. The tenant went downstairs and the downstairs tenants let her in. When she looked at the furnace there were three flashing lights on the back of the furnace. According to the code on the furnace this means "ignition switch error".

The tenant searched the Better Business Bureau website and noted the two most highly rated companies, M Ltd. and H Ltd. M attended at the rental unit on December 30. Their invoice says"

> "Furnace inspection. Drain line is not done properly. The furnace vent seems not properly done. There is a possible water trap in the vent side. Furnace has pressure switch error code."

The charge for the inspection was $47.25, which the tenant paid.

M told her that this was not the original furnace. When the furnace was replaced the venting was not. They said the venting and the furnace were not compatible. Moreover, the furnace was too large for the square footage of the house. M explained that high efficiency furnaces must be properly vented. If condensation forms in the drain pipe the water can block the pipe, particularly if there is a bend in the pipe. If water blocks the air flow there will not be enough pressure and the furnace will not start.

Based on the recommendation of M the tenant turned the furnace off. She ahs been using electric space heaters ever since.

The landlord testified that this high efficiency furnace was installed in 2009 by K Plumbing and Heating and that neither his family, nor the subsequent tenant, experienced difficulty with the heat.

When he built his new house P Plumbing and Heating, who were recommended by K, installed the plumbing and heating in it. He filed two invoices from P. The first was for installing venting for the heating on December 21 and replacing the igniter on December 25. The invoice amount was for $695.50. The second invoice was for inspecting the furnace on January 10. That invoice says: "Everything in working order. Furnace working with Thermostat set at 22 C." That invoice was for $80.25.

The tenant questions the legality and ability of P. She filed a letter from the local municipality which stated that they "did not find any records of the company holding a licence" in that municipality. The landlord says the company has it certification from the B C Safety Authority but does not have a business licence for this municipality.

Meanwhile the tenant stopped payment of the January 1 rent cheque. The landlord served her with a 10 Day Notice to End Tenancy for Non-Payment of Rent. The tenant says she received it on January 8 and she paid the January rent in full on January 13. The landlord did not give a written receipt for the payment.

On January 6 the tenant gave the landlord a long letter outlining her grievances, suggesting the possible outcomes as she saw them, and concluding with: “Please let me know what you decide in writing only! I will not respond to texts/phone calls or anyone showing up at the door.” The landlord says this direction from the tenant limited his ability to respond to her concerns.

The tenant filed this application for dispute resolution on January 12.

Shortly after, the tenant received the BC Hydro invoice for the period December 2 to January 19. It was in the amount of $461.16. She closed her account on January 21. The tenant testified about various conversations with BC Hydro and other that suggested that the hydro bills would go much higher. The Fortis bill for the period December 1 to January 5 was $110.48.

On January 22 the tenant had H attend at the rental unit. Their invoice says: “The furnace is oversize for this house and need some additional venting and proper draining in order to work O.K.” The charge for the inspection was $49.95 and was paid by the tenant.

By February 7 the tenant was so frustrated with the situation that she contracted H to make the necessary repairs. She paid them up front as requested. After working for 1 ½ hours they returned the money to her. They told her the furnace was too big for the building and they could not fix it. Their invoice says: “We came here today to fix the venting and fix the problem. Due to further investigation the furnace is oversized for the house and improper venting is done the furnace will not work unless the new furnace is installed.”

The quote for the new furnace is $3850.00 plus tax. The tenant was charged $100.00 for the service call.

The landlord questions the ability or qualifications of H.

At the hearing on February 12 the landlord said he wanted to have someone look at the furnace again. The tenant stated that she did not want the landlord in her rental unit based upon her application for an order that the landlord’s right of entry be restricted. Although I explained to the parties that he landlord has the right of entry as set out in the legislation until an order is made restricting that right the tenant was not prepared to accept my statement of the law.

The landlord subsequently served the tenant with a 24 hour written notice of entry. The tenant responded by texting the landlord that if he came into the rental unit she would call the police. She did agree that the technician and the landlord’s daughter could come into the rental unit to check the thermostat.

According to the tenant the technician arrived at 8:00 am on February 18 in an unmarked truck. The landlord and the technician went downstairs and turned the furnace on. The tenant says the furnace come on at approximately 8:16 am, 9:35 am, and 9:50 am. Each time it ran for about eight minutes.

The technician came to the door of the rental unit, showed her his certificate, and gave the name of the company. When the tenant asked him to repeat the name of the company he declined to do so and repeated that he was a qualified technician. He told the tenant that he had checked the furnace and it was working. She expressed her doubts about the authenticity of his credentials or his inspection.

The landlord’s position is that three different technicians have looked at the furnace and said it is working.

The tenant's claim for an order limiting the landlord's right of entry relates to an incident on January 10. She had sent the landlord a text message that morning. At about 11:00 am while she was upstairs, the tenant heard keys rattling at the front door. Because of the layout of the house she could not see who was at the front door. She called the police who attended. Based on the proximity of the events the tenant concluded that it was the probably the landlord at the door. However, she also pointed out that P's invoice is dated for January 10 and it is possible that the landlord gave them the keys to the property.

The tenant has a student staying with her for which she receives payment of $900.00 per month. The tenant claims $1800.00 for loss of revenue because a second international student refused to move in because of the ongoing heating problem. This claim was not included in the original application for dispute resolution or amended application for dispute resolution. It was first mentioned in a document titled "Further Important Notes" filed on January 27. The note says: "Due to lack of heat and unstable living conditions, it is not possible to rent out one of my rooms, therefore I have suffered financial loss of approximately $900.00 X 2 for December & January."

In another noted filed in the same evidence package titled "Details of Dispute" the tenant claims: "$1800. Loss of revenue due to 2nd international student refusal to move in Jan/Feb because of ongoing heating problems."

The tenant filed a list of items she says need to be repaired and some photographs. Most of the photographs are of the wiring and plumbing below the deck. The only item the landlord responded to in his testimony was the claim that the bathroom fans required repair. He said they worked; she said they were noisy.

Finally, the tenant claimed $1000.00 for punitive damages.

Analysis

10 Day Notice to End Tenancy for Non-Payment of Rent.

The evidence is that the tenant received the 10 Day Notice to End Tenancy on January 8 and paid the arrears in full on January 13. Pursuant to section 46(4) of the *Residential Tenancy Act* the result of the payment being made within five days of the receipt was to render it null and void. Even if the payment was made more than five days after receipt the landlord did not provide the tenant with a receipt that specified it was being accepted" for use and occupancy only". The result of that failure was to re-instate the tenancy.

Furnace

Much of the tenant's material focused on her suspicions that the technicians sent to the rental unit by the landlord were not properly qualified. The landlord could have easily dealt with this issue by submitting copies of their licences and/or qualifications. He did not, thereby leaving that issue unresolved.

On the other hand the tenant basically told the landlord in her letter of January 6 that if he did not buy her out of this tenancy agreement she would drag the issue out for several months. This statement does not enhance her credibility.

However, both M and H gave a similar analysis of the situation and charged a similar amount for their service call. Of the two companies, M provided the clearer explanation and does not have any complaints about their work posted on the Internet. Accordingly, I wold not be prepared to make any

order based solely upon H's recommendation that the furnace be replaced. M has never been asked to fix the venting so it is unknown whether they would be successful.

I order that the landlord arrange to have the furnace inspected by a company of his choice; but a company that is properly licenced by the BC Safety Authority and the local municipality; to inspect the furnace in the rental unit within three weeks of receiving this decision; and to provided copies of their report and their licences/certificates to the tenant within one week of the inspection. Thereafter, either party may take such action, including filing an application for dispute resolution to the Residential Tenancy Branch, as is appropriate based upon the results of the inspection.

I also order that the landlord reimburse the tenant for the inspections done by M and H in the total amount of $197.20.

In the meantime, I accept the evidence of the tenant's witnesses that the rental unit is cold. The landlord made a point of the tenant's statement that it was 14C in the unit. That is not warm enough.

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

Heat is only one aspect of the value of a tenancy agreement so a total reduction of rent is not appropriate. **I award** the tenant a rent reduction in the amount of $225.00/month (15%) for the months of December, January, February and March; a total of $900.00. The rent is reduced by $25.00/month for April, May, June, July, August, September and October. The rent reduction goes back to $250.00 starting November 1, 2015. These reductions remain in place until the heating system is repaired; the tenancy ends; or either party receives an arbitrator's order ending the rent reduction; whichever first occurs.

Hydro and Gas Bills

The tenant testified that she was told the equalized payments for hydro would be $217.00/month and for gas $46.00/month. Equalized payments are based upon an average of higher costs in the winter months and lower costs in the summer. There is only one invoice filed for each utility; both are based upon actual usage. The actual hydro bill was $461.16 for seven weeks; which translates to $263.52 for a four week month. The actual gas bill was $110.48 for five weeks; which translates to $88.38 for a four week month. Both bills reflect usage during the coldest part of the year. They are within the range the tenant said she expected when she entered into this tenancy so there is no reason to overturn the clear terms of the tenancy agreement.

Whether the hydro and gas accounts are registered in the name of the landlord or the tenant, the tenant is responsible for payment of 2/3rds of each account.

I award the tenant the sum of $192.55, which represents 1/3 of the BC Hydro and Fortis bills submitted by the tenant in evidence.

Landlord's Right of Entry

There is no evidence that the landlord has ever attempted to enter the rental unit illegally. Even the tenant testified that the noise she heard on January 10 could have been the plumbing company going to the wrong door. The tenant's application for an order limiting the landlord's right of entry is dismissed.

Repairs

Most of the photographs filed by the tenant are of the wiring and plumbing below the deck. Although it looks messy the wiring itself is all proper exterior wiring and there is only one extension cord plugged into a power bar.

Several witnesses mentioned the gas fireplace and the landlord did not refute any of their statements in his oral testimony. **I order** that the landlord have the gas fireplace inspected at the same time as the furnace is inspected. The time limits and conditions apply to this order as to the order relative to the furnace.

The landlord is responsible for the exterior maintenance of the property, except as specifically stated in the tenancy agreement. **I order** the landlord to have the deck and hot tub power washed and all debris removed from the yard by May 15, 2015.

There was no detail provided about any of the other repairs listed. The balance of this claim is dismissed with leave to re-apply.

Cleaning

The photographs show that the unit was not cleaned to the standard expected by section 32(1) prior to the start of this tenancy. When landlords or tenants clean a unit on their own they usually claim and are usually awarded compensation in the range of $15.00 to $25.00/hour. There was no detail provided by the landlord about the actual number of hours she spent cleaning so any award is in the nature of general damages. Based upon the photographs and my experience in hearing and deciding claims for cleaning **I award** the tenant general damages of $250.00 for cleaning.

Loss of Rental Income

No documentation was provided that established that a second student had agreed to rent from the tenant and subsequently refused to move in. Accordingly this claim is dismissed.

Exposure to Carbon Monoxide

Any exposure occurred while the tenant was working outside an open area. Other than a bare statement from the tenant that she reacted to this exposure there was no evidence that she suffered any harm as a result. This claim is dismissed.

Punitive Damages

Punitive or aggravated damages are only awarded in the most extreme of circumstances. This dispute does not come anywhere near the standard required. This claim is dismissed.

Filing Fee

The tenant claimed reimbursement of the filing fee from the landlord. She did not pay a fee to file her application for dispute resolution so this claim is dismissed.

Summary of Monetary Award to Tenant

In summary I find that the landlord must pay the tenant the sum of $1539.75 calculated as follows:

Rent reduction for December, January, February, and March	$900.00	
Reimbursement for Service Calls		$197.20
Landlord's share of utilities		$192.55
Compensation for cleaning		$250.00

I grant the tenant a monetary award in this amount. Pursuant to section 72 this amount may be deducted from any rent due or coming due to the landlord.

Conclusion

a. The 10 Day Notice to End Tenancy dated January 5 is set aside and is of no force or effect.
b. A variety of repair orders and a rent reduction order have been made.
c. A monetary order in favour of the tenant in the amount of $1539.75 has been made.
d. All other claims of the tenant have been dismissed without leave to re-apply, except the tenant's application for additional repairs which has been dismissed with leave to re-apply.

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 06, 2015

Residential Tenancy Branch