Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on August 29, 2014, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Landlord, his Agent, and each Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by each other. The majority of the Landlord's evidence was submitted by his Agent. Therefore, for the remainder of this decision, terms or references to the Landlord importing the plural shall include the singular 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.

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

Have the Tenants proven entitlement to monetary compensation?

Background and Evidence

The Tenants submitted evidence that they entered into a fixed term tenancy agreement that began on April 15, 2014. The tenancy agreement stipulates that the tenancy will end on April 14, 2015, at which time the Tenants must vacate the rental unit. Rent of $1,800.00 is due on or before the 14th of each month and on April 1, 2014 the Tenants paid $900.00 as the security deposit plus $900.00 as the pet deposit.

The Tenants testified that in July 2014 they left the rental unit for a four day vacation. When they returned to the rental unit on July 19, 2014 at approximately 10:30 p.m. they found that the power had been turned off. They contacted the Landlord immediately and as per the Landlord's instruction they called the hydro company. When the hydro company attended they told the

Tenants that they were told they could not turn the power back on because the hydro bill had not been paid.

The Tenants stated that the Landlord had told them that the owner had failed to pay the hydro bill, despite their tenancy agreement indicating that electricity and heat were provided in their rent.

The Tenants now claim $2,466.38 which consists of the following:

$1,494.65 for groceries from four different stores ($336.42 + $58.75 + $1,053.28 + $46.20) to replace the food that they had in their fridge and freezers
$473.36 for additional food items that they submitted as needing to be replaced from specialty stores or markets
$348.00 for reimbursement of rent for the six days without power – because of the stress in dealing with the loss of power when they returned home and for having to eat and shower elsewhere
$25.00 to reimburse the neighbours for the use of their power because they ran an extension cord from the neighbours to plug in their deep freezer
$125.37 to cover costs incurred at restaurants, groceries, and for ice purchased July 20th and 21st, 2014

In support of their claim the Tenants submitted, among other things, copies of: a written submission; a Monetary Order Worksheet; a CD containing photographs and pictures of the receipts which were provided in evidence, and spreadsheets listing estimates for the losses incurred.

The Landlords confirmed that the power had been turned off on July 16, 2014, due to the Owner forgetting to pay the hydro bill. They submitted that the Tenants returned home from their vacation late Saturday evening and despite the Landlord's attempts to resolve the situation immediately, they could not get the power turned back on until Monday July 21st, 2014 when the hydro office reopened.

The Landlords disputed the amounts being claimed and submitted that when they arrived at the rental unit the Tenants had placed their frozen food on the front lawn and said it had been spoiled. They argued that not all of the contents of the Tenants' fridge and freezers would have been spoiled in that short period of time, such as mustard or ketchup. They noted that the hot water was provided by natural gas and not electricity so the Tenants did not have to leave the home to shower.

The Landlord stated that they had originally offered the Tenants $676.68 to settle the matter back on July 23, 2014, as compensation for the inconvenience for returning home to no power and for some of the food they had lost. The Tenants refused their offer and requested one month's free rent which would be $1,800.00. The Landlord refused the Tenant's request for free

rent and informed the Tenants that they should claim their losses through their tenant insurance. In consideration of that initial offer, the parties were given the opportunity to settle these matters during this hearing; however, the parties were too far apart and the hearing reverted back to an arbitrated process.

In closing, the Tenants stated that they did not have tenant's insurance at the time of the power outage. They argued that they had discussed the situation with their insurance agent and were told that even if they did have insurance, they would not be covered for a landlord not paying the hydro bill.

Analysis

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

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The party making the claim for damages must satisfy **each** component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement
3. Proof that the claimant followed section 7(2) of the Act and did whatever was reasonable to minimize the damage or loss.
4. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life or has been used, it is necessary to reduce the replacement cost by the depreciation of the original item.

The undisputed evidence was that the power had been turned off from sometime on July 16, 2014 until July 21, 2014, and the Tenants suffered a loss of some food that had been kept in their fridge and freezer during. Therefore, the Tenants have met criterion # 1 as listed above proving that a loss existed.

The tenancy agreement provided that the Tenants' rent included electricity and heat. The undeniable evidence was the Owner failed to pay the hydro bill which resulted in the electricity being turned off at the rental unit for six days from July 16, 2014 to July 21, 2014. Therefore, there was sufficient proof that the Tenants' loss occurred due to the neglect of the Owner. Accordingly they have met criterion # 2 of the test for damage or loss.

The Tenants claimed $1,968.01 ($1,494.65 + $473.36) for reimbursement of the food contents of their fridge and freezer which was based on estimates as listed on their spreadsheet provided in evidence. Based on the foregoing, and in consideration of the Landlords' submission, I find the Tenants have submitted insufficient evidence to prove or verify the actual value of their loss. Specifically, I accept that not all the contents of their fridge or freezers were lost. Furthermore, there is insufficient evidence that the losses would total $1,968.01. I make this finding in part because the Tenants failed to provide invoices or receipts to prove the actual cost of those items being replaced, either at the time they were originally purchased or at the time they were replaced. Rather, the Tenants relied solely on estimates of what they determined the replacement items would cost.

In an instance where a party is relying on estimates for items not yet purchased, I would expect to see a third party provide those estimates, such as a written estimate from a named supplier, to ensure the estimates were not exaggerated. For example, the Tenants had estimated it would cost $1,053.28 to replace their organic free range chicken from a specific supplier as follows:

Size	Price	Qty	Sub-total	
100g	2.9	363.2	1053.28	[reproduced as written]

The above is very misleading in that it could be understood that the Tenants had 363.2 chickens in their deep freezer, each weighing 100g and priced at 2.90 per 100 g. It could also be interpreted as the Tenants had 363.2 g of chicken, which is less than one pound, at an exorbitant cost of $1,053.28. In addition, there was no documentary evidence that would prove the chicken that was in their freezer was organic. The entire spreadsheet was, simply put, submissions determined by the Tenants, without supporting documentations, and without that supporting proof the amounts of the losses could be exaggerated.

Notwithstanding the Tenants' submission that insurance would not cover the cost of all their lost food, there was no documentary evidence to support what an insurance coverage would or would not cover, as the Tenants did not have insurance. Therefore, I accept the Landlord's submission that had the Tenants actually had insurance, they would have been compensated for some of their losses. Accordingly, in absence of tenant insurance, I find the Tenants have not mitigated their loss of food.

Based on the above, I find the Tenants have not met all the criteria of the test for damage or loss with respect to their claim of $1,968.01 ($1,494.65 + $473.36) for reimbursement of the food contents of their fridge and freezer. Accordingly, that claim is dismissed, without leave to reapply.

The remainder of the Tenants' claim, $498.37, related to losses incurred while they were living in the rental unit without power from July 19, 2014 to July 21, 2014 and includes $348.00 for reimbursement of rent for six days; $25.00 reimbursement of neighbor's power, $22.33 ice, $44.57 food, and $51.47 for two restaurant bills.

Excluding the $348.00 for six days of rent ($498.37 - $348.00 = $150.37), I find there to be evidence to support the Tenants suffered a loss for the remaining items and the Landlords did not dispute these items being claimed. Accordingly, I award the Tenants $25.00 reimbursement of neighbor's power, $22.33 ice, $44.57 food, and $51.47 for two restaurant bills for a total amount of **$150.37.**

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.

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.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

Although loss of electricity constitutes a partial loss of the quiet enjoyment of the rental unit, it is not a complete loss of use of a rental unit in July. As such, I make note that in this instance the Tenants left the rental unit on vacation prior to the power being turned off on July 16, 2014 and they did not return home until 10:30 p.m. on July 19, 2014. Therefore, I conclude the Tenants suffered a loss of quiet enjoyment from the time they arrived home on July 19, 2014, (10:30 p.m.) until the power was reinstated sometime on July 21, 2014. Therefore, in this case I conclude the Tenants are entitled to compensation for loss of quiet enjoyment as reimbursement of rent paid for a portion of the three days they were at the rental unit, in the amount of **$125.00;** which is comprised of $5.00 for July 19, 2014 plus $60.00 per day for July 20 and 21, 2014.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have only been minimally successful with their application; therefore, I award partial recovery of the filing fee in the amount of **$10.00**, pursuant to section 72(1) of the Act.

Conclusion

The Tenants have been awarded a Monetary Order for **$285.37** ($150.37 + $125.00 + $10.00). This Order is legally binding and must be served upon the Landlords. In the event that the Landlords 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.

The Tenants may deduct the one time award of $285.37 if they have future rent that is payable. Otherwise, as this tenancy is scheduled to end April 14, 2015, if there is no future rent payable, the Tenants may serve the enclosed Monetary Order.

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 31, 2015

Residential Tenancy Branch