



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order as compensation for loss of propane;
- b) Compensation for propane remaining in the tank when they vacated;
- c) A refund of the security deposit; and
- d) To recover the filing fee for this application.

Service:

The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail on April 8, 2015. It was verified online as successfully delivered on April 9, 2015. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to a refund of twice their security deposit and to compensation for loss of propane and propane left in tank when they vacated? Are they entitled to recover their filing fee?

Background and Evidence

Only the tenants attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in October 15, 2013, rent was \$850 a month and a security deposit of \$425 was paid. The tenant provided evidence that they gave the landlord their forwarding address in writing on November 27, 2014 and vacated earlier that month. They received \$325 of their security deposit back on December 8, 2014 but they had given the landlord no permission to retain any of it. They request twice their security deposit in accordance with section 38 of the Act.

The tenants also said that the propane tank had slow leaks that were not discovered for some time. They said the landlord arranged to have the tank replaced in May 2014 but

the propane supplier could not do it until September 2014. Some items were obstructing it but the tenant said it was the landlord's property such as a snowmobile that was in the way and the landlord moved it. They said they checked with the propane supplier and a similar size house normally uses \$1700 to \$2200 in a year whereas they expended \$3713.59 from October 15, 2013 to November 30, 2014 when they vacated. They said they paid \$769.30 on November 29, 2013, \$1379.80 on February 5, 2014, \$224 in September 2014 for some propane to hold them until the new tank was installed, then \$1340.49 on September 29, 2014. They were obligated to leave the tank 70% full as the landlord provided a 70% full tank at the beginning of their tenancy. They supplied no statement regarding normal use as evidence although they said they had one written on a slip of paper.

The tenants submitted some arguments as to why the landlord should be responsible for some of their first propane bill because the home was vacant for almost two months before their tenancy commenced but I noted to them that the landlord only obligated them to return the home with a 70% full tank; the extra 30% was used during the vacant period and they were not being charged for it. The male tenant said he understood that now.

Included with the evidence are letters from the parties, propane bills and an invoice for replacing the tank dated September 26, 2014.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

The Residential Tenancy Act provides:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of (a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

*(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit,
or both, as applicable.*

I find the tenants had a security deposit of \$425 and had not given the landlord permission to retain any of it. I find they vacated November 30, 2014 and provided their forwarding address in writing on November 27, 2014. Although the landlord returned \$325 in December 8, 2014, I find section 38 and Policy Guideline 17 provides that if the landlord has not returned all the security deposit or made an Application to claim against it within 15 days, the tenant is entitled to twice the security deposit refunded less any amount the landlord has already refunded. There is no evidence that the landlord made an application within the 15 days permitted by the Act. Therefore, I find the tenant entitled to double the security deposit refunded less \$325 already refunded in December 2014.

In respect to the tenants' claims for loss of propane and propane use, awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find in this case that neither party knew of the propane leak for some time. When it was discovered, I find the weight of the evidence is that the landlord had it fixed promptly when the supplier could do so within their schedule. Therefore, I find insufficient evidence that the landlord violated the Act or tenancy agreement. Although the tenant may have suffered some financial loss due to leaking propane, I find this was not due to act or neglect of the landlord. I find the landlord acted promptly to replace the tank when it was discovered. In a recent case before the Supreme Court of British Columbia (2015 BCSC 637 *Parhar Investments & Consulting Ltd. v. Brontman*) Mr. Justice MacKenzie found that the arbitrator's decision "to award compensation to the upstairs tenants, notwithstanding the fact that she clearly and unequivocally found no inappropriate conduct or neglect on the part of the landlord," was unreasonable (para. 18). As I find insufficient evidence that the landlord was at fault in this case, I find the landlord is not responsible

to compensate the tenant for propane that was lost due to no fault of the landlord's. I dismiss this portion of the tenant's claim.

Conclusion:

I find the tenant entitled to a monetary order as calculated below and to recover filing fees for this application.

Original security deposit (no interest 2013-14)	425.00
Double security deposit (section 38)	425.00
Filing fee	50.00
Less amount refunded December 8, 2014	-325.00
Total Monetary Order to tenant	575.00

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: September 10, 2015

Residential Tenancy Branch

