



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid utilities and firewood, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The parties confirmed that a previous hearing was held on November 19, 2015. The landlord had filed their application, claiming against the deposits on November 5, 2015. The landlord's application was not considered at the November 2015 hearing. The matter related to return of the deposits to the tenants was decided and the tenants have been issued a monetary order. I explained that if the landlord were to succeed on their application, to any degree, and receive a monetary order the parties could choose to set the orders off against the other or proceed to Small Claims Court for direction.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$954.55 for the cost of heating oil and firewood?

Background and Evidence

The tenancy commenced on November 1, 2014. The tenants moved into the unit on October 31, 2014. A copy of the tenancy agreement supplied as evidence indicated that heat was not included with rent. The tenants were told that heating oil had cost approximately \$80.00 per month in the past.

The landlord provided a copy of an oil company invoice as evidence the oil tank was filled on September 3, 2014. That document did not clearly set out the date the tank was filled. The sum charged to the landlord was \$1,583.68.

The landlord confirmed that the tank was not dipped by the oil company at the start of the tenancy, in order to determine the level of oil in the tank. The landlord said they had been in the unit in August, to complete repairs but that no heat had been used between the time the tank was filled and the tenancy commenced.

The tenant said that the first time they saw a bill was on May 31, 2015 when the landlord sent a photo of part of an invoice showing \$1,137.56 owing. During the tenancy the tenant had made three payments for oil, totaling \$450.00.

The tenants did not know how much oil was used before they moved into the unit and suspect heat was used when the home was painted and the carpets were cleaned prior to the tenancy. The tank was not dipped at the end of the tenancy, to prove what was used during the tenancy. The tenants did not fill the tank during the seven month tenancy.

The landlord used an on-line tank calculator. He dipped the tank and calculated the tenants had used 268.196 liters of oil. At a cost of 1.359 per liter, the tenants would have consumed a total of \$959.32 for fuel during the tenancy. The landlord provided a copy of a print-out from the web site used to make this calculation.

There was no dispute that the tenants used some firewood that was on the property. The landlord told the tenants they could use it and replace the wood. When the landlord checked the firewood the tenants had used two cords. The landlord has charged \$250.00 for each cord.

The tenants said that they had been told they would have use of a shop, as part of the tenancy agreement signed. The use of the shop became a point of dispute. At this stage in the tenancy the landlord decided they wanted the tenants to pay for the wood they had used.

The parties submitted multiple text messages as evidence. Few of these messages were entered as evidence during the hearing

Analysis

There was no dispute that the landlord did not have the oil tank dipped at the start of the tenancy. If the tank had been dipped there would be agreement on the amount of oil that was in the tank.

The landlord then failed to have the tank dipped at the end of the tenancy; again leaving the tenants without any accurate information on the possible heating oil usage level since they moved into the unit.

The landlord has a responsibility to ensure that the tenants are provided with reliable and accurate information. From the evidence before me I accept the tenants' had a legitimate right to question the amount of oil that was in the tank at the start of the tenancy. The invoice the landlord relied upon was issued almost two full months before the tenancy commenced. This leaves the tenants with what I find a reasonable concern that oil may have been used.

When the landlord failed to have the tank level established the oil company at the end of the tenancy there was no accurate record of what oil may have been used; although that was already in doubt as the tank was not checked at the start.

I have given the landlord's calculation of the heating oil level no weight. I find that the only reliable information would be an independent check of the oil level at the start and end of the tenancy.

I find that the tenants did pay \$450.00 for heating oil use during the tenancy; this was not in dispute.

From the evidence before me I find that the tenants expected to pay approximately \$80.00 per month for heating oil. Therefore, as the tenants expected to pay for heating oil I find that the landlord is entitled to reasonable compensation in the sum of \$560.00 (\$80.00 X 7 months); less \$450.00 paid for heating oil. The landlord is then entitled to the balance in the sum of \$110.00. The balance of the claim is dismissed.

I find that the claim for firewood is not a matter that can be decided as part of the tenancy and that jurisdiction is declined. This was a matter that fell outside of the tenancy, as an independent agreement between the parties. Firewood was not referenced in the tenancy agreement and the agreement was not amended to include firewood costs.

I decline filing fee costs to the landlord as this matter could have been settled should the landlord have ensured the tank levels were checked at the start and end of the tenancy.

Based on these determinations I grant the landlord a monetary order in the sum of \$110.00. In the event that the tenants do not comply with this order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to \$110.00 for heating oil. The balance of this claim is dismissed.

Jurisdiction is declined in relation to firewood costs.

Filing fee are declined.

This decision is final and binding and 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: May 31, 2016

Residential Tenancy Branch