



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KIDD GROUP OF COMPANIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, PSF, RR, MNDC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant under the Residential Tenancy Act (the “Act”).

The Tenant filed an Application requesting the following:

- for money owed or compensation for damage or loss under the Act, Regulations, or tenancy agreement.
- for an order that the Landlord conduct emergency repairs.
- for the Landlord to provide services and facilities required by law.
- to deduct the cost of repairs, services or facilities from the rent.
- for the Landlord to comply with the Act.
- to recover the cost of the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to money owed or compensation for damage or loss?
- Is the Landlord required to make repairs or emergency repairs to the unit for health or safety reasons?
- Is the Landlord required to provide services or facilities required by law?

- Is the Tenant entitled to deduct the cost of repairs, services or facilities from the rent.

Background and Evidence

The Parties testified that the tenancy began in August 2, 2016, and is currently a month to month tenancy. The Tenant is to pay the Landlord rent in the amount of \$1,100.00 each month. The Tenant paid the Landlord a security deposit of \$550.00 and a pet damage deposit in the amount of \$250.00.

The Landlord provided a copy of the tenancy agreement that indicates; heat, light, and water are not included in the tenancy.

The Landlord explained the tenancy agreement with respect to the service of water. The Landlord testified that there is a water well on the rental property that is shared with two other properties. The Landlord testified that he does not control the well head. He testified that the maintenance of the well is the responsibility of the Tenant. The Tenant is required to provide the electricity to the well pump, and heat to the well head to ensure it doesn't freeze. The Tenant receives compensation for providing the electricity and heat from the other properties that share use of the well.

The Tenant testified that the rental unit is a three bedroom and one bathroom trailer of approximately 850 square feet.

The Tenant testified that at the start of the tenancy the water was working. He noticed fluctuation in the water supply and asked the Landlord to investigate. The Landlord arranged for an electrician to attend on December 7, 2016, and a pressure tank was repaired.

The Tenant testified that on December 22, 2016, the water stopped working. The Tenant testified that he notified the Landlord's agent of the problem on December 22, 2016.

The Tenant testified that he went without water to the unit for 8 days over the Christmas holidays. The Tenant testified that because he had no water his family had no use of the laundry, toilet, bathing, cooking, and dishes during this period. The Tenant testified that he bathed at the residence of friends.

The Tenants Claims

The Tenant is seeking an order that the Landlord perform emergency repairs. The Tenant is also seeking compensation for the following items:

Gas	December 3 to December 29	\$20.00
Heater	Keep well thawed	\$35.00
Rent	7 days	\$248.50
Water costs		\$49.00
Filing fee		\$100.00
Punitive damages	Suffering and distress	\$10,000.00

Gas \$20.00

The Tenant testified that the rental unit is 14 kilometers from town and he had to drive into town to fill up water bottles from a dispensary. The Tenant wants compensation for his gas cost.

In response the Landlord submitted that the Tenant regularly uses bottled water and would have had to drive to get his water anyway.

Heater \$35.00

The Tenant testified that he purchased a heater on December 9, 2016 to keep the well thawed. The Tenant testified that the Landlord's son who acts as the Landlord's agent told him he should get a heater and that he would be reimbursed for the cost. The Tenant is seeking the reimbursement of the cost for the heater.

In response, the Landlord submitted that keeping the well head warm is part of the agreement that the Tenant maintain the well head.

Rent \$248.50

The Tenant testified that he is seeking a reduction in rent for the 7 days that he went without water. The Tenant is seeking \$248.50 which amounts to 7 days of rent.

The Tenant testified that he is seeking the compensation due to the immensity of the situation of living in the unit without water for toilets, bathing, cooking, drinking, and cleaning.

The Tenant acknowledged that he lived and slept in the unit during the 7 days there was no water. However, the Tenant later testified that the bottled water that he purchased was used for the baby, the toilet, drinking, cooking, and dishes.

In response the Landlord testified that

Water Costs \$49.00

The Tenant testified that he purchased 7 bottles of water every two days. The Tenant is seeking to recover the cost of the water.

In response the Landlord testified that he offered to provide the Tenant with bottled water when he became aware of the problem and the Tenant said no because he has water bottles and a water machine. On December 26, 2016, the Tenant advised the Landlord that he had no water so the Landlord sent his son to the rental unit with two large bottles of water.

Punitive Damages \$10,000

The Tenant is seeking compensation from the Landlord for causing strife and refusing to rectify the problem until after the holidays. The Tenant applied for \$10,000.00 to give room for the Arbitrator to award appropriate compensation for suffering and distress of having to deal with the loss of water.

The Landlord testified that he got a message from the Tenant on December 22, 2016 and contacted the Tenant the next day. He testified that he offered to provide the Tenant water at this time and the Tenant declined the offer. He testified that it was not until December 26, 2016, that the Tenant complained to him about needing water. The Landlord testified that on December 26, 2016 he sent his son to the property with two large bottles of water.

The Landlord testified that he had someone on the property dealing with the problem on December 27, 2016, and determined that the pump was broken. On December 30, 2016, the Landlord arranged for a crane truck to remove the old pump and install a new pump.

The Landlord testified that during the hearing is the first time he has been informed by the Tenant that there is still a problem with getting water to some areas within the rental unit.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Branch Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

...Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer’s willful or reckless indifferent behavior. They are measured by the wronged person’s suffering

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

I find that the Tenant had water service when he moved into the rental unit in August 2016.

While the Tenant is responsible to provide the electricity to the pump, and heat to the well head, the Landlord is responsible to ensure the pump is working. I find that the Tenant complied with providing electricity to the pump and heat to the well. I find that the pump stopped working, and that providing a working pump is the responsibility of the Landlord.

I find that the Landlord took timely action to respond to the Tenant's concerns, but timely action was affected by availability of workers due to the holidays.

Due to the broken well pump, the Tenant went without the service of water for 7 days and the Landlord is responsible to compensate the Tenant for a reduction in the value of the tenancy for this period of time, and for some of the Tenant's costs a set out below.

Gas \$20.00

The Tenant had no service of water from December 22, 2016 to December 30, 2016 and the Tenant had to drive into town to retrieve water.

While I acknowledge that the Landlord provided the Tenant with two large bottles of water, I find that the Tenant required additional water during the 8 days which required trips into town. I find it is reasonable that the Landlord compensate the Tenant \$20.00 for the Tenant's gas costs.

Heater \$35.00

The Tenant testified that the Landlord's agent advised him to purchase a heater for the well head and that he would be reimbursed.

The Landlord did not directly respond to the Tenant's testimony that his son informed the Tenant that the cost of the pump would be paid for by the Landlord. The Landlord submitted that the Tenant is required to provide the electricity to the well pump, and heat to the well head, to ensure it doesn't freeze.

The tenancy agreement indicates that heat, light, and water, are services that are not included in the tenancy.

The burden of proving the claim rests with the applicant and I find that there is insufficient evidence that the Landlord agreed to reimburse the Tenant for the purchase of the heater. The Tenant's claim for \$35.00 is dismissed.

Rent \$248.50

I find that the Tenant has suffered a loss of the service of water for 7 days which affected his use of the rental unit. The Tenant still lived in the unit, and had full use of the unit other than the loss of water which affected his use of the bathroom, laundry and

kitchen. The Tenant testified that he used bottled water for cooking, the toilets and drinking during this period.

I find that the loss of water service amounts to a reduction in the value of the tenancy and pursuant to section 65 of the Act, I am granting the Tenant compensation from the Landlord in the amount of \$17.75 per day for seven days. I have reduced the amount of the Tenant's claim since the Tenant had use of the rental unit and testified that he used bottled water for cooking, toilets and drinking, during this period.

I grant the Tenant the amount of \$124.25 for loss of the service of water for 7 days.

Water costs \$49.00

I find that the Tenant did not have the ability to access any water for a 7 day period and the Landlord is responsible for the cost of the Tenant's water because the water pump failed. While the Tenant did not provide a receipt, I find it reasonable to grant the Tenant the amount of \$49.00 for the cost of purchasing water.

Punitive Damages \$10,000

With respect to the Tenant's claim for punitive damages, for pain and stress, the Tenant has provided insufficient evidence to support his claim for pain and suffering. There is no documentary evidence / medical evidence from the Tenant to support his claim for pain and suffering.

The compensation of \$10,000.00 that the Tenant is seeking appears to be punitive and more in line with an administrative penalty under the Act. I find that this seems to be consistent with the Tenant's intentions of the remedy he is seeking in this Application. I do not have the authority to adjudicate administrative penalties. The dispute resolution process is not the mechanism for seeking administrative penalties. Tenants do not receive compensation when an administrative penalty is levied. The Tenant should call the Residential Tenancy Branch and speak with an Information Officer if he wants information on an administrative penalty. The Tenants claim for \$10,000.00 is dismissed.

The Landlord testified that he only became aware, during the hearing, that the Tenant has further concerns about getting water to the rental unit. The Landlord testified that he will look into the issue. The Tenant may reapply for a repair order or compensation if the Landlord fails to address the Tenants concern regarding access to water for the rental unit, and the parties cannot reach an agreement.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was partially successful in his application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

In total, I award the Tenant a monetary order in the amount of \$293.25. This amount is comprised of the \$193.25 that I awarded for loss of the service of water; and the recovery of the \$100.00 filing fee. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord is responsible for a temporary restriction of water to the rental unit. The Tenant suffered a loss of value of the tenancy for 7 days.

The Tenant is granted a monetary order in the amount of \$293.25

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: January 30, 2017

Residential Tenancy Branch