Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, CNR, DRI, ERP, LRE, MNDC, MNR, OLC, PSF, RP, FF

Introduction

This hearing was scheduled in response to the tenants' Application for Dispute Resolution, in which the tenant has applied to cancel a 10 day Notice to end tenancy for unpaid rent, to cancel a one month Notice to end tenancy for cause, dispute an additional rent increase, request emergency repairs and repairs, an order the landlord comply with the Act, an order the landlord provide services or facilities required by the law or tenancy agreement, compensation for the cost of emergency repairs and damage or loss under the Act, to suspend conditions on the landlords' right to enter the rental unit and to recover the filing fee from the landlord 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 parties were affirmed. The hearing process was explained. 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. I have considered all of the evidence and testimony provided.

Preliminary Matters

The parties agreed that the tenancy ended effective January 12, 2017 when the tenant vacated. Therefore, only the matters related to the claim disputing a rent increase and damage or loss remained for consideration.

The tenant did not bring forward evidence of any expenditure for the cost of emergency repairs.

The monetary worksheet was clarified. It was understood by the parties that the tenant was claiming compensation from the period of December 15, 2016 to January 14, 2017.

The landlords' children planned to remain present during the hearing. It was explained that any evidence they might provide would be given appropriate weight, as witnesses should attend only for the period of time needed to allow submissions. The landlords'

son was not affirmed and did not provide testimony. The landlords' daughter acted as translator.

The parties confirmed receipt of evidence supplied by each within the required time limit.

Issue(s) to be Decided

Is the tenant entitled to compensation due to loss of heat and rent overpayment totaling $2,700.00?

Is the tenant entitled to compensation for damage or loss under the Act in the sum of $3,350.00 as "mental compensation?"

Background and Evidence

The tenancy commenced on July 15, 2016. Rent was $1,300.00 per month, due on the first day of each month. The landlord was issued a security deposit which has been returned via a cheque post-dated for January 25, 2017. The tenant has yet to supply a written forwarding address to the landlord.

The tenancy agreement was translated to English by both parties, including the following clause, as provided in the landlord's evidence:

> *"if there are visitors in the unit for more than 7 days, there will be an extra charge of $100 per month per person…"*
>
> (Reproduced as written)

The translation of this term provided by the tenant indicates:

> *"If there is a visitor lives over one week, there will be CAD $100 more for that month. CAN $100 per person…"*
>
> (Reproduced as written)

The tenant has made the following claim for compensation:

- $1,400.00 from November 15 to December 14, 2016;
- $1,300.00 from December 15, 2016 to January 14, 2017; and
- $3,350.00 mental compensation.

The rental unit is in a duplex; the landlord lives on one side, the tenant on the other. With the exception of a single baseboard heater in a bedroom, the unit was heated by an in-floor gas boiler system.

The tenant said that on December 5, 2016 the heat ceased working and that it was not repaired until December 25, 2016.The landlord was notified on December 6, 2016. The

tenants' agent said he attended at the home in mid-December and spoke with the landlord. The agent said he was at the unit on other occasions when the heat was not on. The agent said the tenant's newborn baby was so cold its' lips had turned blue. The landlord and family were wearing winter coats and told the agent it was too expensive to heat the whole home. The agent provided a space heater to the tenant.

On December 22, 2016 the tenant went to the Residential Tenancy Branch office. A staff member made a telephone call to the landlord, to tell the landlord that heat must be turned on. The heat was not turned on until December 25, 2016.

The tenant said that on five or six occasions she asked the landlord to turn the heat on. With the exception of December 5, 2016 the tenant could not say when these requests were made.

The parties each provided copies of text messages.

The landlord said they were contacted on December 6, 2016 regarding a heat problem. The in-floor heat is operated through a boiler system. The landlord inspected the unit and on December 7, 2016 found the floor was operating properly.

The landlord said the tenant reported a heat problem on December 12, 2016. On December 13, 2016 a repairperson came to the home. An invoice was supplied as evidence of the repair. The landlord submits that on December 17, 2016 the tenant again notified them that the heat was not working. On December 17, 2016 the heat pump and a circuit board were replaced. A copy of the December 17, 2016 invoice was supplied as evidence.

A December 18, 2016 text indicated the landlords' daughter agreed the heating was malfunctioning and that their side was cooling. The daughter wrote that the repairman would be called in the morning. The tenant was asked to use the room that had the baseboard heater and the landlord would try their best to get the heat working. The company that completed the repair the previous day was contacted and the repair was completed on December 19, 2016. An invoice was not issued as the work was warrantied.

On December 20, 2016 the landlord offered the tenant a portable heater as "back-up" just in case the system was to fail again. The landlord wrote that the repairperson had said the due to the unusual weather there were quite a few homes having similar issues. The tenant declined the offer of the heater; the landlord replied that was fine but they could provide it the tenant needed another.

On December 24, 2016 the tenant text to say her floor was cool. The landlords' daughter responded asking the tenant check the thermostat, as it was possible the thermostat could have reached the maximum temperature. The landlord provided a photo of the thermostat showing the temperature at 25 degrees. At 12:53 a.m. on December 25, 2016 the tenant text the landlord to report that the floors were cool. The

landlord saw the message at 7:31 a.m. and replied. By this time the tenants' floor was warm.

The landlord agrees that there was no heat on December 12, 17 and 18, 2016. The landlord does not agree that the tenant was without heat during the time claimed by the tenant.

The tenants' agent alleged that the landlords' repair invoices were not authentic. The agent could not locate the individuals and suggested the repairs were not legitimate. The agent said he has many years of experience in the area of repairs and that one of the companies used does not exist; he could not "find anything for them." The agent said that the repairs could not be completed for the sum charged for a heat pump; the cost was very low. The agent called the cost of this repair "miraculous." The agent said there was no heat from December 6 to December 25, 2016. If the last repair was made on December 18, 2016 it is suspicious that the heat did not come on until December 25, 2016. The agent suggested the landlord had switched the breaker off and that the bills were fabricated.

The tenant has claimed an extra $100.00 she paid during the time her sister stayed in the home from November 13, 2016 to January 12, 2017. The tenant confirmed that her sister lived in the home during this time.

In relation to the claim for mental anguish, or a loss of quiet enjoyment, the tenant said that on one occasion the landlords' young son stood outside of the tenants' door, yelling. This went on for approximately 30 seconds. The tenant had a newborn child and this, combined with the lack of heat, made her fearful. The landlord had told the tenant not to do laundry so often and would tell the tenant to turn off the heat. On one occasion the landlord asked the tenant not to open the window. The tenant left the unit in January as she felt the rental unit was unsafe.

The tenants' agent said she was offered nothing by the landlord except verbal abuse.

At the time the tenant moved in she mentioned the light was dim. The tenant was told she could install higher wattage bulbs if she wished to pay for them.

Counsel for the landlord responded that the allegation the breaker was turned off is nonsense. The landlord submitted a copy of the gas bill, which shows usage during the month of December, was the highest usage of the past year. There is no basis in reality that the landlord denied the tenant heat. Once the tenants' agent started to communicate with the landlord the relationship quickly spiraled and eventually a Notice ending tenancy for cause was issued.

The landlord understands the obligation to repair and took steps as soon as the tenant reported the heat problem. The heater offered by the landlord was refused by the tenant. Counsel stated that from the time of the last repair until the tenant vacated there was no problem with the heat.

The landlord said there is no basis for a claim regarding loss. The tenant has made a written submission she felt unsafe and depressed. This is not a reasonable response to three days without heat. The landlord asked the tenant at the start of the tenancy to try to keep laundry use to a minimum. There is no evidence of any anxiety or stress caused by the landlord.

The clause in the tenancy agreement was not a guest fee, but for an additional occupant. The tenants' sister stayed for two months; the tenant paid, as she had agreed she would and never objected. This is what was contemplated by the parties.

The tenant may have wanted higher wattage light bulbs, but this does not support a claim for anguish.

Toward the conclusion of the hearing the tenant said that sometimes the heat did come on and that it was not completely off. Counsel for the landlord responded that now the tenant was saying the heat was off intermittently; rather than constantly from December 6, 2016.

Counsel said there was no evidence supplied setting out the status of the tenants' agent as an expert.

Analysis

Residential Tenancy Branch (RTB) policy suggests that a party may apply for compensation to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When considering a claim for loss of rent revenue consideration is given to:

- whether a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- if the loss or damage has resulted from this non-compliance;
- if the party who suffered the damage or loss can prove the amount of or value of the damage or loss;
- if the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32(1) of the Act sets out the landlords' responsibility to repair:

> ***Landlord and tenant obligations to repair and maintain***
>
> ***32*** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> *(a) complies with the health, safety and housing standards required by law, and*

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

From the evidence before me I find that the landlord adequately responded to reports of heating issues. The landlord has not disputed that on three occasions in December 2016 the tenant was without heat. From the evidence before me I find that the initial report of heat loss did not require repair as the heat did not continue to malfunction. The next report of heat loss was followed by a repair the next day, December 13, 2016. A second report occurred on December 17, 2016; with a third on December 18, 2016. I find on the balance of probabilities that on each occasion the heat was restored within a reasonable period of time.

The tenant could not provide specific information on the total loss of heat the tenant says she experienced. This, combined with the tenants' contradictory statement made during the hearing that heat was lost only intermittently, causes me to question the reliability of the tenants' testimony. As a result I found the landlords' submission more credible and the invoices supplied by the landlord as a reliable record of the repairs required.

I have rejected the tenants' agents' suggestion that the invoices were somehow fabricated or the repair cost was miraculous. The agent brought forward no evidence in support of the allegations made. The landlord did not dispute that the heat had malfunctioned and that repair was needed. The landlord agreed there was a problem with the heat and took what I find were appropriate steps, as required by section 32 of the Act, to repair the heat. If the tenants' agent believes the repairs were somehow fabricated there was no evidence provided to support that allegation.

The text messages supplied by the landlord show what I find to be civil communication between the landlord and tenant, with the tenant reporting the heat was "broken again." This leads me to conclude that the heat had been working and had then failed again. This contradicts the tenants' submission that the heat had failed for a period of weeks.

I find on the balance of probabilities that the tenant was without heat for a period of three days; on December 12, 17 and 18, 2016. As a result I find that the tenant is entitled to compensation in the sum of $32.00 per day for each day the heat was not working ($96.00.) As the tenant occupied the rental unit I have awarded compensation representing a portion of daily rent paid. I also find that the tenant is entitled to compensation for part of December 13, 17 and 2016, taking into account the loss of heat until the repairs were completed, totaling $30.00. Therefore, the tenant is entitled to total compensation in the sum of $126.00 for loss of heat.

A tenant is entitled to quiet enjoyment, as set out in section 28 of the Act:

Protection of tenant's right to quiet enjoyment

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

(a) reasonable privacy;
(b) freedom from unreasonable disturbance;
(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
(d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant has set out a claim for “mental anguish” as the result of the loss of heat and the behaviour of the landlord. From the evidence before me I find that the tenant has failed to establish a claim. The one-time occurrence when the landlords’ young son yelled outside the door for a period of 30 seconds fails to meet a standard that would support compensation. A single event of the nature described by the tenant is insignificant and, while unwelcome and inappropriate, does not entitle a party to compensation. As set out in RTB policy, temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

If the tenant had wanted higher wattage light bulbs the tenant was at liberty to purchase light bulbs; the landlord was not required to do so. There was no evidence before me that the tenant was barred from using the laundry or from opening windows. If the landlord had made a single request that the tenant be mindful of laundry use, I find that is not unreasonable.

Therefore, I find that the claim for loss of quiet enjoyment is dismissed.

I find that the parties had a meeting of the minds when the tenancy commenced and the tenant agreed to pay an additional $100.00 for any additional occupant. A guest is a person who stays for a short period of time or intermittently. The tenant has confirmed that her sister lived with her for approximately two months. The tenant paid the sum agreed to, for one month, in compliance with the tenancy agreement. I find there has been no breach of the Act and that the claim for return of the payment made for the occupant is dismissed.

As the application has merit I find, pursuant to section 72 of the Act that the tenant is entitled to recover the $100.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary order in the sum of $226.00**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The tenant is entitled to compensation in the sum of $126.00 for loss of heat.

The balance of the claim is dismissed.

The tenant is entitled to filing fee costs.

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: January 24, 2017

Residential Tenancy Branch