



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenants stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via the mail slot at his place of business on January 29, 2017. The landlord confirmed service as claimed by the tenants. The landlord stated that no documentary evidence was provided. As both parties have attended and have confirmed receipt of the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Discussions during the hearing resulted in the tenants' application for repairs being dismissed with leave to reapply. Both parties confirmed that the only outstanding repair issues are the windows and the blinds. The landlord provided undisputed affirmed testimony that the windows should be replaced within 1 week of the hearing date and that the blinds would be replaced shortly thereafter. As such, no further action is required at this time regarding repairs.

It was also clarified with both parties that the tenants were not seeking a further reduction in rent, but were seeking compensation as part of their monetary claim for the

loss of use of portions of the tenancy. As such, the tenants' application for a reduction in rent is dismissed with leave to reapply.

It was also clarified with both parties that as the tenants filed an application for \$2,606.00 and submitted a monetary work sheet for \$2,650.79 that the tenants' application shall be limited to the amount filed for \$2,606.00.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulations or the tenancy agreement and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 1, 2016 on a fixed term tenancy ending on August 31, 2017 as shown by the submitted copy of the signed tenancy agreement dated August 22, 2016. The monthly rent is \$1,500.00 payable on the 1st day of each month. A security deposit of \$750.00 was paid.

The tenants seek a monetary claim of \$2,606.00 which consists of:

\$1,200.00	20% of rent over 4 month without properly working appliances, heat, blinds and windows and lack of privacy
\$406.00	excessive utility costs for space heaters due to broken heat-pump
\$1,000.00	Compensation for Aggravated Damages
\$44.79	purchase of a curtain

The tenants seek a 20% reduction in their rent for the period of September 1, 2016 to January 6, 2017 as compensation for the loss of use of heat, dirty blinds, no use of the balcony, no washer and dryer for a 3 week period, loss of use of the garburator for a 3 week period, loss of use of a dishwasher for a 3 week period and a stove that was not fully functioning for the period of September 5, 2016 to January 25, 2017. The tenants stated that this was an arbitrary amount not based upon any actual losses, but based upon what they "thought was right".

The tenants provided direct testimony that the landlord failed to deal with issues that the landlord was notified of on September 5, 2016 in a timely manner. They consisted of:

- Non-functioning bottom left element on stove
- Missing bedroom blinds
- No heat in master bedroom
- Replace balcony

The landlord confirmed that the tenants suffered a loss of use of the noted items, but claims that the amount sought was excessive and that the tenants only suffered a minor inconvenience. The landlord stated that upon being notified, the tenants were immediately provided with space heaters, had contractors/technicians attend to repair the noted items and in some cases the appliances were replaced as soon as possible. The landlord noted that the delays were the result of order back log and waiting for city permits for window replacements. The landlord stated that the tenants did not suffer any actual expenses, but admits that an inconvenience took place.

During the hearing the landlord conceded the tenants' claim for recovery of \$44.79 for a curtain. As such, the tenants have been successful in this portion of the claims.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

At the outset, the tenants' claim for aggravated damages for \$1,000.00 was dismissed. Residential Policy Guideline #16 states an arbitrator does not have the authority to award punitive damages, to punish the respondent. As such, this portion of the tenants claim is dismissed.

During the hearing discussion were held between the parties that led to limited settlement regarding the tenants claim for recovery of excessive utilities. Section 63 of the *Residential Tenancy Act* provides that the parties may attempt to settle their dispute

during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows;

Both parties agreed that the landlord shall pay to the tenants \$360.00 for the tenants claim for utilities.

The above particulars comprise full and final settlement of all aspects of the dispute arising from this application for both parties regarding the utilities claim.

In the tenants claim for \$1,200.00 as compensation for the loss of use regarding 4 months without properly working appliances, heat, blinds and windows and lack of privacy, I find that the tenants have failed. Although both parties have confirmed that a loss occurred to the above noted items, the tenants' monetary claim of \$1,200.00 is based upon an arbitrary amount. In this regard the tenants have failed to provide sufficient evidence to support the claim of recovery of 20% of the monthly rent. However, I find that a loss did take place in the form of an inconvenience to the tenants as confirmed by the landlord and on this basis I grant an arbitrary nominal award to the tenants of \$400.00 for the inconvenience regarding the heat over the 4 month period. I note that during this particular time the weather was colder than normal and that the loss of regular heat was a significant inconvenience. I find that in the other circumstances that the landlord upon being notified acted reasonably and a contractor/technician attended to rectify those issues in a reasonable manner. The issue regarding the window upgrades were delayed through no fault of the landlord, but because of permit requirements from the city.

The tenants having been partially successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenants favour in the amount of \$904.79 under the following terms:

Item	Amount
Curtain	\$44.79
Utilities Settlement	360.00
Nominal Award	400.00
Recovery of Filing Fee	100.00

Total Monetary Order	\$904.79
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The tenant is provided with this order in the above terms and the landlord must be served with this order as soon as possible. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

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: February 22, 2017

Residential Tenancy Branch

