



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDC, RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a rent reduction; a monetary order; and to dispute a rent increase.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

At the outset of the hearing the tenant clarified that he was not pursuing his dispute regarding the rent increase. He stated that he wanted to proceed solely on the claim for compensation based on a rent reduction for the duration of the tenancy.

I amended the tenant's Application for Dispute Resolution to exclude the issue of a rent increase.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a rent reduction and a monetary order to recover the rent reduction, pursuant to Sections 32, 33, 65, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began in June 2015 as a 1 year fixed term tenancy that converted to a month to month tenancy effective June 2016 for a monthly rent at the end of the tenancy of \$1,260.00 due on the 1st of each month with a security deposit of \$600.00 and a pet damage deposit of \$600.00 paid. The tenancy ended when the tenant vacated the rental unit on January 15, 2017. I note neither party provided a copy of a tenancy agreement into evidence.

The tenant submitted that within the first month of tenancy he informed the landlord by text message that there was a problem with the fireplace and he could not use it. The tenant stated that despite repeated requests to deal with the problem the landlord had failed to do anything until after he gave notice to end the tenancy in December 2016.

The tenant testified that the fireplace was his only source of heat for the 1 bedroom rental unit and because the landlord failed to fix the problem he went without heat for the duration of the tenancy. The tenant acknowledged that there was a furnace in the

house but stated that it only heated the upstairs and that there were no vents in the rental unit.

The landlord testified that the furnace in the house was the primary heat source for the rental unit and that there were vents in the unit located in the entry way; the living room; and the bedroom. In support of this statement the landlord submitted a letter signed by the technician as owner/operator of a furnace and fireplace company that states that "the primary source of heat for the house is a gas furnace that was operational.

The landlord submitted that while he does remember receiving a text from the tenant about the fireplace in the early part of the tenancy he does not believe that it was within the first month. He stated he thinks it is unlikely since the tenant moved into the unit in June and would not be using the fireplace at that time.

The landlord acknowledged doing nothing about it at the time and that when the tenant raised the issue again in March of 2016 he attempted to find a part to replace but was unable to do so. He stated that he then forgot about it until the tenant contacted him in the fall of 2016.

The parties agreed at that time the landlord provided the tenant with the name and contact information of the person who installed the fireplace and had agreed to complete any required repairs.

The tenant testified that he called the technician about 1 ½ weeks before he was planning to leave the country for 3 weeks. He stated that he left the technician a message that included advising him that he would be out of the country for 3 weeks which would be a perfect time for the work to be done if it couldn't be done before he left the country. The tenant testified he also called the technician a second time but did not leave a message. The tenant submitted that he never heard back from the technician but he did not inform the landlord that he had not been able to connect him.

The tenant confirmed that he did not at any time attempt to have the fireplace repaired himself or contact the Residential Tenancy Branch to see what he could do about the problem. He felt that he had been given the run around over this issue for the duration of the tenancy and as a result he decided to end the tenancy.

The landlord testified that when he didn't hear anything from the tenant he had assumed that the work had been completed and that the technician had just not yet billed him for the work. He stated that the next time the fireplace issue was raised was when the tenant was giving his notice to end the tenancy.

The tenant seeks compensation in the form of a rent reduction for the duration of the tenancy at \$400.00 per month. I note the tenancy endured for 19 ½ months. At the rate requested by the tenant the total reduction would have been \$7,800.00 but the tenant seeks only \$6000.00. The tenant submitted that because heat; water; and hydro were

included in the rent he determined that he should request a 1/3 reduction because he was not provided heat or 1/3 of the utilities provided.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

Section 33(1) of the *Act* defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- Major leaks in pipes or the roof,
- Damaged or blocked water or sewer pipes or plumbing fixtures,
- The primary heating system,
- Damaged or defective locks that give access to a rental unit, or
- The electrical systems.

Section 33(3) states a tenant may have emergency repairs made only when all of the following conditions are met:

- Emergency repairs are needed;
- The tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; and
- Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33(4) states a landlord may take over completion of an emergency repair at any time. Section 33(5) stipulates that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 33(7) allows that if a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

In addition, at any time during a tenancy a tenant may submit an Application for Dispute Resolution seeking an order to have the landlord make repairs and/or emergency repairs and for a rent reduction until such repairs are made.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In the case before me both parties provided testimony as to whether or not the fireplace in the unit was the primary heat source. As the landlord disputes the tenant's claim that the fireplace was the primary heat source and that there were at least 3 vents into the rental unit, it is incumbent upon the tenant to provide additional evidence to corroborate his position. The tenant has provided absolutely no evidence to support his assertion, such as photographs of the rental unit.

I find the tenant has failed to establish that the fireplace was the primary heat source in the rental unit. While I have found that the tenant has not established the fireplace was a primary heat source, this does not mean that the landlord was not required to provide a working fireplace.

In the case before me, while the landlord wrote in his written submissions that: "the fireplace, which is not referenced in any way in our rental agreement..." [reproduced as written] I find that when a fireplace is a fixture in a rental unit the landlord is obligated to ensure that it is a functioning fixture unless the tenancy agreement stipulates, in writing, that the landlord will not be providing a working fireplace.

Based on the above, I find, in this case, that the landlord failed to provide a working fireplace for the duration of the tenancy. Therefore, I find the tenant is entitled to compensation subject to his obligations to establish a value for the loss in value of the tenancy and to mitigate his losses.

While the tenant has requested \$6,000.00 for the duration of the tenancy which he states is based on 1/3 of the rent because the landlord failed to provide 1/3 of the utilities included in the rent or \$400.00 per month, I find the tenant is actually asking for \$307.69 based on the total claim divided by the total months of the duration of the tenancy.

As I have determined that the tenant has failed to establish that the fireplace was the primary heat source for the rental unit the loss in value of the tenancy would be substantially reduced. Even if it were the primary heat source, I find that 1/3 of the amount of rent based on the inclusion of heat, water and hydro would be assigning the

only value of the tenancy to be the utilities provided – this would not account for the provision of any of the space at all in the rental unit including a bedroom; bathroom; kitchen and living room. As a result, I find the claim for up to 1/3 of the rent is excessive.

Residential Tenancy Policy Guideline #16 states the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Guideline #16 goes on to say an arbitrator may award monetary compensation only as permitted by the *Act* or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.
- “Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

As I have determined the tenant has not provided a realistic estimate of the loss in value of the tenancy, I grant the tenant is entitled to a nominal award of \$25.00 per month for the duration of the tenancy or a total of \$487.50, still subject to the tenant’s obligation to mitigate his losses.

However, I am persuaded by the landlord’s position and from the tenant’s testimony that the tenant failed to take all available reasonable steps to mitigate the losses in the value of the tenancy.

Section 7 of the *Act* states if a party to a tenancy does not comply with the *Act*, regulations or their tenancy agreement, the non-complying party must compensate the other party for any damage or loss that results.

The section goes on to state that the party who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

While I accept that the tenant informed the landlord early on in the tenancy that there was a problem with the fireplace I find the tenant's subsequent actions or failure to take action constitute a failure to attempt any mitigation.

The tenant has failed to provide any evidence that after the initial report of the problem he continued to raise the issue with the landlord other than in March and October 2016; that he attempted to obtain an order from the Residential Tenancy Branch pursuant to Sections 32 and/or 33 of the *Act* to have the landlord make repairs or emergency repairs; or if he truly believed that the fireplace was the primary heat source that he attempted to have the repairs completed as an emergency repair pursuant to the provisions of Section 33, at his own cost to be reimbursed after completion of the repair.

Furthermore, I find the tenant's failure to inform the landlord that he had not receive a call from the technician either before he left the country or upon his return to tell him that the fireplace had not been repaired actually prevented the landlord from being able to have the repairs completed.

For these reasons, I find the tenant failed to take any steps whatsoever to mitigate his losses, pursuant to Section 7 of the *Act*.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety and without leave to reapply.

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 28, 2017

Residential Tenancy Branch