



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

The Application for Dispute Resolution filed by the Tenants the following:

- a. A monetary order in the sum of \$3938
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlords reside on May 25, 2017. With respect to each of the applicants' claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on March 1, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$1850 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$925 and a pet damage deposit of \$925 at the start of the tenancy.

The tenants gave the following evidence:

- On Sunday, December 4, 2016 she heard the furnace making rattling and screeching sound. She then identified a burning smell and noticed smoke coming from the furnace. A technician was called and it was discovered that the furnace had not been cleaned in years. A fuse had been bypassed with copper wire so that it was not possible for the furnace to shut off automatically. There was a concern that the furnace may be leaking carbon monoxide. The technician red tagged the furnace and shut it off.
- The technician advised that the mother board was not working and it would cost \$1100 to repair. There was no guarantee that the furnace would work after the repairs were made.
- That evening the landlord arranged for two heaters to be brought to the tenants' rental unit.
- The landlord recently purchased the property. They had advised the tenant in September that it was their intention for the property to be demolished in the spring of 2017.
- The next day the landlord brought another heater. However, this caused a short in the electricity. The tenants asked for a second heater of the type brought by the friends of the landlord on December 4, 2016. This heater was provided on December 6, 2016.
- The temperature dropped and the house was extremely cold.
- On December 8, 2017 the tenants contacted the landlord to advise that they could not live there with the heaters and the furnace need to be fixed. The landlord asked the tenant to take photos of the motherboard and to provide copies. The landlord advised she was determining whether it was worthwhile fixing the furnace.
- On December 9, 2017 the tenants advised the landlord they were not going to live in the house given the situation. The tenant testified that she began looking for alternative accommodation. The only accommodation she could find was an extended stay rental property on Robson Street but they required that the tenants stay one month. The tenants claim \$3050 for the cost of this accommodation.
- The tenants removed their belongings from the rental unit on December 17, 2017 and a walk through was conducted on December 19, 2017.. The tenants claim \$525 for the cost of movers and \$320 for the cost of storage fees.
- After the walk through the landlord reimbursed the tenants for the rent for the period from December 4, 2017 to December 31, 2017 and also returned the security deposit and pet damage deposit.

The landlord disputes the tenants' claims. He gave the following evidence:

- The tenants failed to give the landlord sufficient time for a permanent solution to be found. They gave the landlord notice they were leaving less that 24 hours after providing photos of the motherboard.
- The landlords deny they advised the tenant that they refused to fix the furnace. The furnace was replaced on December 28, 2016 at a cost of \$4200. The house has not

been demolished and was back to normal living conditions at the end of December 2016.

- The landlord reimbursed the tenant for the rent for the period from December 4, 2016 to December 31, 2016. The tenants opted to pay a lavish \$3050 for a 30 night stay in the heart of downtown one block from Robson Street. A search on Expedia.ca resulted in 96 hotels that are pet friendly in Vancouver (and vicinity) with rates as low as \$55 per night.
- The landlord responded immediately to the tenants' concerns. The landlord paid the cost of the technician who attended on December 4, 2016 at a cost of over \$300. That evening the landlords' enlisted the help of friends who brought heaters over. The landlords provided the tenants with another heater on the type the tenants wanted a couple of days later.

Preliminary Issue

The tenants seek compensation for their out of pocket expenses for the cost of moving, the cost of staying in alternative accommodation and the cost of storage after the furnace in the rental unit broke down. They testified they have receipts for these out of pocket expenses. However, they failed to provide copies of the receipts to the Branch and to the landlord even though the landlord notified the tenants on the first page of their materials that the as of October 16, 2017 the tenants had not provided any evidence.

Rule 2.5 and 3.14 of the Rules of Procedure provide as follows

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch directly or through a Service BC office, the applicant must submit:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on at the hearing.

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3.14 Evidence not submitted at the time of Application for Dispute Resolution
Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

In summary the Rules provide that the applicant should submit all documentary evidence to the respondent at the same time the Application is filed or if that is not possible, not less than 14 days before the hearing.

The tenants failed to submit the receipts. They did not request an adjournment. I determined it would not be appropriate to consider these documents as they were not presented into evidence and they failed to provide the respondent with a copy thereby denying them the opportunity to investigate the veracity of the documents.

Analysis

Section 7 of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss

Policy Guideline 16 includes the following:

16. Compensation for Damage or Loss

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C. COMPENSATION

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. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;

- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Analysis

After carefully considering all of the evidence I determined the tenants failed to provide sufficient evidence to prove their claims for the following reason:

- The tenants have the burden of proof to present sufficient evidence to prove their claim on a balance of probabilities.
- The tenants failed to present the receipts necessary to prove their claim for out of pocket expenses contrary to the Rules of Procedure and the principles of natural justice and on this basis alone the claim should be dismissed. This significantly prejudiced the landlord as it effectively prevented the landlord from the ability to investigate this veracity of this evidence.
- Further, I determined the tenants failed to prove they mitigated their loss when they decided to rent a 30 extended stay in the heart of downtown Vancouver. In particular
 - The tenants failed to substantiate their evidence about the extent to which they looked at alternatives. They failed to keep a list of other hotels or rental places that refused their request.
 - The tenants failed to prove that a 30 day extended stay starting December 9, 2017 was the only reasonable alternative given they were they moving into a new rental unit on January 1, 2017.
 - I determined the tenants failed to give the landlord reasonable time to fix the problem.
 - The tenants failed to present sufficient evidence to prove the landlord had no intention of fixing the furnace. They decided to move out within 24 hours of providing the landlord with a photo of the motherboard. It was reasonable to assume the landlord was considering fixing it as they would have no reason to ask for the photo if the decision had been made not to fix it. The furnace was replaced on December 28, 2017.
 - The landlord acted reasonably and promptly to the tenants requests in providing heaters etc.
- The tenants failed to prove that they acted reasonably in mitigating their loss when they rent a storage unit for one month and for the cost of moving their belongings to that storage unit.

As a result I dismissed the tenants' claim for the cost of alternative accommodation, the cost of moving and the cost of a storage unit. The claim for registered mail is dismissed as it relates to the cost of litigation. The only jurisdiction an arbitrator has relating to costs is the cost of the filing fee.

Monetary Order and Cost of Filing fee

As a result I dismissed the Tenants' application for a monetary order and the cost of the filing fee without leave to re-apply.

This decision is final and binding on the parties.

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: November 8, 2017

Residential Tenancy Branch