



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPRM-DR FFL FFT CNR LRE RR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord’s agent, JF (‘landlord’), testified on behalf of the landlord, and had full authority to do so.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with the Applications and evidence.

The tenants indicated in the hearing that they had moved out of the rental suite on November 1, 2017. As the tenants had moved out, and the tenancy has ended, both applications were withdrawn with the exception of the monetary claims.

Issue(s) to be Decided

Are both parties entitled to a monetary order for compensation and losses that they have applied for?

Are both parties entitled to recover the filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on May 1, 2017, with monthly rent set at \$3,092.50, payable on the first of every month. The landlord submitted a copy of the tenancy agreement in their evidence which indicates that a security deposit and pet damage deposit in the amounts of \$1,500.00 were paid at the beginning of the tenancy, which the landlord still holds. The tenants testified in the hearing that they had paid \$3,200.00 total. Both parties confirmed that the tenants' forwarding address was not previously provided in writing to the landlord.

The landlord is seeking a monetary order in the amount of \$3,092.50 for the October 2017 rent, which the tenants admit was not paid. The tenants are seeking \$700.00 in compensation as the furnace broke down, and the tenants were without heat from December 17, 2017 to January 3, 2017. Both parties agreed that the tenants had notified the landlord on December 18, 2017 of the furnace breaking down. The tenants followed up on December 19, 2017, and received a response from the landlord that someone would be dispatched to come fix the furnace. The tenants testified that the furnace was repaired on January 4, 2017, while the landlord testified that the furnace was repaired on December 20, 2017 when the tenants were out of town. The tenants were away from December 2, 2017 to January 2, 2017, but testified that they had given access to the landlord for the purpose of performing repairs. The tenants assumed the landlord would fix the furnace while they were away.

The tenants are seeking \$150.00 for the electrical bill, \$250.00 for the payments that the tenants made for the utilities that the neighbouring suite also used, and \$150.00 in compensation for the rotten deck.

The landlord disputes the claim for the rotten deck, stating that they had offered to repair the railing declined that offer. The tenants testified that it was not the railing that was rotten, but testified that there may have been communication issues due to a language barrier between the two parties. The tenant further submitted \$150.00 in pain and suffering for not having access to a functioning furnace during freezing temperatures.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As the tenants admitted to owing the entire rent for October 2017, I am allowing the landlord a Monetary Order to recover unpaid rent in the amount of \$3,092.50.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the Act or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the Act by taking *reasonable steps to mitigate or minimize the loss.*

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the Act on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 32(1) and (2) of the Act outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

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.

I have considered the testimony of both parties, and while both parties agreed that the furnace had broken down on December 18, 2017, it was disputed when the furnace was actually repaired. Both parties also agreed that the tenants were away for the period of December 2, 2017 through to January 2,

2017, and that the landlord had performed the repairs as required by section 32(1) as stated above. The tenants also admitted that there was a language barrier, and communication may have been an issue. The tenants admitted that this language barrier may have been an issue when discussing the required repairs to the deck. The tenants did not submit written evidence for this hearing to support their requests for repairs. I find that the evidence provided does not sufficiently support how the landlord failed to comply with the *Act*. Furthermore, the tenants did not provide sufficient supporting evidence to support the monetary losses they are claiming. On this basis, I dismiss the tenants' monetary claim for the electric heating bill, the amount claimed for overpayments, as well as for the deck.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

The tenants requested \$150.00 for "pain and suffering" due to the broken furnace. Although I sympathize with the tenants that the furnace had broken down during the winter, I find that they did not establish how their suffering was due to the deliberate or negligent act or omission of the landlord. On this basis I dismiss the tenants' monetary claim for aggravated damages.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were not successful in her application, the tenants must bear the cost of this filing fee.

As the landlord was successful in their application, I find that the landlord is entitled to recover the filing fee for their application.

The landlord continues to hold the tenants' security deposit and pet damage deposits. It was disputed as to whether this amount was \$3,200.00 or \$3,000.00. As the tenancy agreement indicates deposits in the amount of \$1,500.00 each, and as the tenants did not provide evidence to support that \$3,200.00 was paid, I find that \$3,000.00 is the amount of deposit that was paid, and the landlord still holds. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit and pet damage deposit of \$3,000.00 in partial satisfaction of the monetary claim.

Conclusion

As the tenancy ended on November 1, 2017, both applications were cancelled with the exception of the monetary claims.

The tenants' entire application is dismissed without leave to reapply.

I order the landlord to retain the tenants' security deposit and pet damage deposits of \$3,000.00 in partial satisfaction of the monetary claim.

I am making an Order in favour of the landlord as follows:

Rental Arrears for October 2017	\$3,092.50
Less Security Deposit & Pet Damage Deposits	-3,000.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$192.50

I issue a monetary order in the landlord's favour in the amount of \$192.50 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: January 24, 2018

Residential Tenancy Branch