Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNDC 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 allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to the service of any evidence on file.

Issues

Are the tenants entitled to a monetary order for compensation for damage or loss and an order for a past rent reduction?
Are the tenants entitled to recover the filing fee for this application from the landlord?

Background & Evidence

The tenancy originally began in October 2013. The parties renegotiated a new fixed term lease on an annual basis. The last signed agreement was for the period of October 1, 2016 to October 1, 2017 at a monthly rent of $3900.00 payable on the 1st day of each month. The parties were unable to renegotiate new terms at the expiry of this lease and it continued on a month to month basis. The tenants were issued a 10 Day Notice to End Tenancy (10 Day Notice) on November 20, 2017. The tenants applied to dispute the 10 Day Notice and the landlord filed its own application for an

order of possession pursuant to the 10 Day Notice. In a decision dated, February 15, 2018, the Landlord was granted an Order of Possession effective March 1, 2018. In the previous hearing, the parties arrived at a mutual agreement to end tenancy on this date. The landlord was also granted a monetary order in the amount of $16,726.49 which was comprised of unpaid rent/utilities and loss of rent for the period of September 2017 to February 28, 2018, less authorized deductions for emergency repairs and heater rental and less the security/pet deposit. At the beginning of this tenancy, the landlord had the heating system maintained annually by a third party professional contractor but in the summer of 2015 the parties agreed that the tenant would take over the maintenance.

On page 11 of the previous decision, in the last paragraph, the Arbitrator also found as follows:

> Based on the undisputed evidence of both parties, I accept the primary heating failed in December 2016 and that a "back-up system" was developed by the tenant, or his corporation, to supply heat in the house (referred to as the "back-up system"). In the absence of a functioning primary system, I further accept that the back-up system became the primary heating system, at least until a new primary heating system was installed in December 2017. It was also undisputed that starting in December 2016 the tenants required the use of electric heaters as part of the back-up system in order to obtain more heat in the house and that the heaters were supplied by the tenant or his company and that the landlords' agent was aware of this. However, the tenant did not indicate he would be billing the landlords for the use of his company's heaters and did not invoice the landlords for several months afterwards. This scenario is very atypical for emergency repairs as an emergency repair usually involves a one-time repair that is made in an urgent situation because the tenant cannot reach the landlords despite trying two times. It would appear to me that the landlords did respond to the failure of the primary heating failure in December 2016 issue and there was discussion as to tenant providing the "back up system". What the tenant is now seeking is recovery of rental fees for the heaters that were supplied over several months after the primary system failure but without a meeting of the minds with respect to compensation for that service.

As noted above, in the previous decision the Arbitrator permitted a deduction of $1000.00 for the cost of the heaters from the outstanding rent amount awarded to the landlord.

The tenants are seeking an amount of $23,400.00 in a rent reduction which is equivalent to 50% of the monthly rent for the landlord's failure to provide the essential services of heat for the 12 month period of December 2016 to December 2017. The tenants are also seeking an amount of $13,200.00 (reduced to $9000.00 in the hearing in order to meet the maximum allowable claim amount) for the landlord failing to meet

the required housing standards of providing a minimum temperature of heat in all living areas. The tenants calculated this amount as the equivalent of 25% of monthly rent from the beginning of the tenancy in October 2013 to November 2016. Lastly, the tenant is claiming $2000.00 in increased heating costs as a result of utilizing five space heaters for the period of December 2016 to December 2017. The tenant submitted an "Electric Billing History" from the utilities provider which he claims shows an excess of $2000.00 in total charges in the 2017 billing period as compared to the 2016 billing period.

The landlord disputes the tenants claim in its entirety. The landlord submits the "Electric Billing History" submitted by the tenants does not accurately reflect increased consumption costs as it does not take into consideration any rate increases implements by the utilities provider. The landlord further submits that the yearly breakdown as per the billing history is not accurate as the billing period for 2017 was based upon 366 days versus 306 days in 2016. With respect to the claim for a 50% rent reduction for the period of December 2016 to December 2017, the landlord submits the tenant first notified the landlord of the issue in December 2016. The tenant developed a back-up heating system at this time and never said he was unhappy with the back-up system that he developed. The landlord followed up with the tenant a few months later and no issues were reported at the time. It wasn't until September 2017 that the tenant again contacted the landlord in regards to the heating issue. The landlord arranged for a contractor to inspect the heating system at this time and it took until December 2017 for the contractor to order the necessary parts and repair the heating. With respect to the tenants claim for loss for the period of October 2013 to November 2016, the landlord submits that the tenant never brought this up as an issue prior to December 2016 but rather the tenant renegotiated yearly fixed term agreements at increased rent amounts over this period.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

There was no dispute that the primary heating system failed in December 2016, after which the tenant developed a back-up system along with the use of electric space heaters. There was also no dispute that this back-up system became the primary heating system until a new heating system was installed in December 2017.

I note that the tenants did not file any application for a rent reduction or for compensation for loss or for the landlord to make repairs to the rental unit until after being issued a 10 Day Notice for failure to pay rent in November 2017. The tenants waited almost a full calendar year after the heating system failed in order to make any such application. As such, I find the tenants did not reasonably minimize or mitigate any potential loss they may have incurred. I find it would have been more reasonable for the tenant to file an application requesting the landlord to repair the heating system within a reasonable time after it first failed in December 2016. In accordance with section 33 of the Act, if the landlord upon being advised of the emergency repairs failed to perform the repairs within a reasonable time period, the tenants could have had the repairs completed and either claimed reimbursement or withheld rent from the landlord. Rather the tenant continued to make use of the space heaters and the back-up system he installed for a period of 12 months. As such, I find the back-up system installed by the tenant continued to provide adequate heat to the rental unit. If the heating was not at all adequate as suggested by the tenants, it would have been more reasonable that they filed an application requesting repairs soon after December 2016. At the very least, it would have been reasonable for the tenant to make an application for repair or request compensation after he received his first alleged increased utilities bill after the installation of the back-up system. Similarly, I find the tenants did not mitigate any alleged losses for the entire period of complaint from October 2013 to November 2016. Rather, the tenants voluntarily entered into at least three new fixed term leases on an annual basis over this period. Additionally, I find the “electric billing history” report submitted by the tenant does not on its own accurately reflect the alleged increased energy consumption as alleged by the tenants. This report does not take into account increased utilities rates over the years as noted by the landlord and it also does not take into account average temperatures which can significantly affect consumption. The fact that alleged losses of this nature are often difficult to quantify make it all that more imperative for parties to take reasonable steps to mitigate any potential losses soon after they occur.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the filing fee paid for this application from the landlord.

The tenants’ application is dismissed in its entirety without leave to reapply.

Conclusion

The tenants' application is dismissed in its entirety 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: April 30, 2018

Residential Tenancy Branch