



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BENTALL KENNEDY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT MNDCT OLC PSF RP RR

Introduction

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

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*;
- an Order directing the landlord to comply with the *Act* pursuant to section 62; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing, with the tenant representing himself at the hearing, while the corporate landlord was represented by regional property manager, C.L.R. (the “landlord”). Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Both parties confirmed receipt of each other’s evidentiary packages, and the landlord confirmed receipt of the tenant’s application for dispute.

Following opening remarks, the tenant explained that repairs to the rental unit had been completed and that the issues for which he was seeking compensation were addressed by repairs done in January 2018. The tenant said he was no longer pursuing the portion of his application related to emergency repairs.

Issue(s) to be Decided

Is the tenant entitled to a monetary award?

Can the tenant recover the filing fee?

Should the landlord be directed to comply with the *Act*?

Background and Evidence

Undisputed testimony was presented at the hearing by the tenant that this tenancy began on June 1, 2016. Current rent is \$2,825.00 and a security deposit of \$1,415.50 collected at the outset of the tenancy, continues to be held by the landlord.

The tenant explained that he is seeking a monetary award of \$2,101.00 because of the loss he suffered due to an issue with the building's hot water system which caused only cold water to be available for a two week period. The tenant said that the issue began on December 3, 2017 and that he informed the building manager on December 11, 2017 of his concerns through the building's 'ticket' system that he had no hot water. The tenant said that hot water was eventually restored on January 5, 2018. The tenant said that the lack of hot water prevented him from showering, washing his clothes and from enjoying the rental unit as he should be entitled to. The tenant said that he arrived at the figure of \$2,101.00 as this represented a return of the rent for the time period that he was without hot water (\$100/day for 15 days), along with compensation for the time he spent preparing his application package (\$500) and a return of the filing fee.

The landlord did not dispute that the entire premises suffered from an issue related to hot water but argued that some "warm" water was available to the residents. The landlord presented dates related to the outage which differed from those presented by the tenant. The landlord said that the motor for the hot water system broke on December 23, 2017 and that hot water was fully restored on January 5, 2018. The landlord disputed that any compensation should be awarded to the tenant noting that he had already been given some compensation in the form of bill credits for the time period associated with the outage.

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. In this case, the onus is on the tenant to prove his entitlement to a claim for a monetary award.

The tenant explained that an issue with the building's hot water system had prevented him from utilizing a service that was essential to his tenancy. The tenant said that he was forced to find alternative accommodation during the time period that the building was without hot water, and was greatly inconvenienced by this outage. After reviewing the evidence presented at the hearing and after having considered the oral testimony of both parties, I find that it is indisputable that the building was without hot water for a time period in December 2017 and January 2018. The landlord provided dates of December 23, 2017 to January 5, 2018, while the tenant submitted that he was without hot water from December 3, 2017 to January 5, 2018.

An email dated December 12, 2017 from resident manager O.B. notes that the tenant's complaint of December 11, 2017 was received and that a "short malfunction [was] recorded in the system yesterday evening." During the hearing the landlord conceded that some minor issues had arisen with the building's hot water system prior to the main problem of December 23, 2017 but argued that the issues identified earlier in December 2017 were minor in nature.

I find that the tenant has sufficiently demonstrated that he has suffered a loss under section 67 of the *Act* and is entitled to a monetary award for his loss. While some evidence was presented by the landlord that the issues related to hot water did not emerge until December 23, 2017, I find that clear evidence in the form of an email dated December 12, 2017 shows that the tenant suffered loss and inconvenience earlier in the month. I find the tenant's request for a return of \$100.00 per day for the time period associated with the loss to be excessive as the tenant continued to enjoy the other amenities provided by his apartment, as he was not without power and could wash his clothes on the 'cold' cycle. I find an award of \$50.00 per day to be more reasonable and therefore award the tenant a monetary award of \$750.00.

The tenant has no recourse under the *Act* to collect funds related to the time and efforts he spent compiling the information related to his application. However, as the tenant was successful in his application, he may recover pursuant to section 72 of the *Act*, the \$100.00 filing fee associated with the application.

Conclusion

I make a Monetary Order of \$850.00 in favour of the tenant. This amount includes a \$750.00 monetary award and a return of the filing fee.

The tenant is provided with formal Orders in the above terms. Should the landlord fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: June 5, 2018

Residential Tenancy Branch