



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This decision pertains to the tenants' application for dispute resolution made on June 1, 2018, under the *Residential Tenancy Act* (the "Act"). The tenants seek a monetary order for compensation for loss of heat in their rental unit, and for recovery of the filing fee.

The tenants and the landlord's agent attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues regarding the service of documents.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues to be Decided

1. Are the tenants entitled to a monetary order for compensation for loss of heat?
2. Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The tenants commenced tenancy on November 1, 2016 and ended it on March 31, 2018. Monthly rent was \$3,950.00 and there was a security deposit of \$1,975.00.

In their application, the tenants submitted that "the tenancy contract listed that the heat in this house is included." However, a review of the written tenancy agreement does not appear to reflect that heat was included. That having been said, the landlord's agent did not dispute that heat was included. A copy of the written tenancy agreement was submitted into evidence.

The tenant testified that on January 15, 2018 the furnace stopped working. They immediately told the landlord about the problem and a repairperson was dispatched. The landlord testified that it took about a week for the repairperson to arrange a mutually convenient time with the tenants to come and have a look at the furnace, so repairs did not get underway until about a week after. The tenants testified that the repairman had to visit the house at least four times to fix the furnace. Eventually, the furnace was back in working order on February 19, 2018.

The tenants testified that the landlord provided a large, portable space heater in the middle of January, though they “couldn’t use it because the wattage was too high.”

The tenants claim is for \$1,975.00, which is equal to half the monthly rent and for which the tenants believe is a reasonable amount to be compensated for loss of heat over a period of slightly more than one month. While they understand that furnaces break down, they were nonetheless without heat and felt that the issue was “not taken seriously” by the landlord.

The landlord argued that the tenants are not entitled to any compensation because they dispatched the repairperson almost immediately, and did everything that they had to do in their duty as a landlord to fix the issue.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The tenants seek a monetary order for compensation for loss of heat. The purpose of compensation is to put the person who suffered the damage or loss into the same position as if the damage or loss had never occurred. The party claiming compensation must provide evidence establishing that they are entitled to compensation. In determining whether compensation is due, I must determine whether:

1. a party to the tenancy agreement failed to comply with the Act, regulation, or tenancy agreement;
2. loss or damage resulted from their non-compliance;
3. the party who suffered the damage or loss can prove the amount or value of the damage or loss; and,

4. the party who suffered the damage or loss has acted reasonably in minimizing their damage or loss.

While the tenancy agreement did not indicate that heat was included in the rent, the tenants submitted that it was included and the landlord did not dispute the tenants' position in this regard. As such, I find that heat was included. Thus, as the landlord failed to provide heat for 35 days, they failed to comply with the tenancy agreement.

Having found that the landlord failed to comply with the tenancy agreement, I must then determine whether loss or damage resulted from that non-compliance. The tenants testified that they were without heat for more than a month. Indeed, I note that weather reports for January and February 2018 for the municipality in which the tenants lived indicate cool, if not occasionally cold temperatures in the 0.8°C to 12°C range. Yet, the tenants did not testify as to how cold it got inside the rental unit, nor whether and to what extent they were inconvenienced by the absence of heat. Nonetheless, I do find that they were suffered some loss, however minimal, from the landlord's non-compliance with the tenancy agreement.

The next step, having found that the tenants suffered a loss from the landlord's non-compliance with the tenancy agreement is determining the amount or value of that loss. In an application for monetary compensation, the party claiming the loss must prove the amount or value of a loss. The tenants claim \$1,975.00 on the basis that it is equal to half the rent. Beyond that, however, the tenants did not provide any explanation as to why a loss of heat would be equal to half the rent.

Finally, and before I determine what, if any, compensation the tenants may be entitled to, I am required to determine whether the tenants who suffered a loss acted reasonably in minimizing their loss. While I accept that the space heater loaned to the tenants from the landlord was unusable because of wattage issues, the tenants did not testify about, or offer any evidence regarding what if any other steps they took to minimize any loss resulting from the furnace being out of order. I do, however, note that they took the immediate step of calling the landlord.

Regarding compensation, I am not persuaded by the tenants' argument that they are entitled to an amount of compensation equal to half the rent. While any amount claimed may be somewhat arbitrary, it is incumbent upon the party claiming the loss to provide an explanation or rationale argument as to how a dollar figure was arrived at. Certainly, while the inclusion of heat forms one important element of a tenancy agreement, it is not the only element. In this case, the tenancy agreement included many services and

features of which heat was but one. I further find the tenants did not take any steps to mitigate their loss, other than to call the landlord immediately, which they did.

Taking into consideration all the oral and documentary evidence presented before me, and the submissions of the parties, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for damages. I find that the landlord failed to comply with the tenancy agreement. However, for the reasons provided above, and specifically because of no rationale for the dollar amount claimed, I award the tenants nominal damages only.

“Nominal damages” are a minimal award, and may be awarded where there has been no significant loss, or, where no significant loss has been proven, but where it has been proven that there has been an infraction of a legal right.

For the reasons set out above, I grant the tenants a nominal damage award in the amount of \$200.00. Further, as the tenants were successful in their application, I grant them a monetary award in the amount of \$100.00 for recovery of the filing fee.

Conclusion

The tenants are granted a monetary order in the amount of \$300.00. This order must be served on the landlord and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: August 8, 2018

Residential Tenancy Branch