



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, PSF, RR, FFT

Introduction

The tenants filed an application for dispute resolution on July 19, 2018, pursuant to section 59 of the *Residential Tenancy Act* (the “Act”). The tenants seek the following relief under sections 67, 62(3), 65(1)(b), and 72 (1) of the Act:

1. an order for compensation for the landlord not providing a working alarm system agreed upon but not provided;
2. an order to reduce rent for a working alarm system agreed upon but not provided;
3. an order that the landlord provide a working alarm system as required by the tenancy agreement;
4. an order for compensation for repairs and other expenses not reimbursed by the landlord; and,
5. an order for compensation for recovery of the filing fee.

A dispute resolution hearing was convened on September 18, 2018. The landlord, his interpreter, and the tenants attended the hearing before me, 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 in respect of service of notices or documentary evidence.

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.

This is my decision in respect of the tenants’ application.

Preliminary Issue: Order for Compensation for Repairs and Expenses Not Reimbursed

At the outset of the hearing, the parties advised me that the landlord had reimbursed the tenants for the amount claimed under this aspect of their application prior to the hearing, in the amount of \$678.93. As such, I dismiss this aspect of the tenants' application without leave to reapply.

Issues

1. Are the tenants entitled to an order for compensation for the landlord not providing a working alarm system agreed upon but not provided?
2. Are the tenants entitled to an order to reduce rent for a working alarm system agreed upon but not provided?
3. Are the tenants entitled to an order that the landlord provide a working alarm system as required by the tenancy agreement?
4. Are the tenants entitled to an order for compensation for recovery of the filing fee?

Background and Evidence

The tenants testified that they commenced a tenancy on August 1, 2017, in the rental unit, a two-storey home in a residential neighbourhood. The tenancy was initially a one-year fixed term tenancy ending July 31, 2018, becoming a month-to-month tenancy thereafter. Monthly rent is \$5,750.00.

The written tenancy agreement, a copy of which was submitted into evidence by the tenants, indicates that services included in the rent included, among other items, an alarm. The alarm was to be a non-monitored system (versus a monitored system).

Upon moving into the rental unit, the tenants discovered that the alarm system was inoperable. It has three push-button keypads. However, the keypads and code did not activate the system. On August 2, the tenant ("B.C.") contacted the alarm company about the inoperable alarm to get the system to work. The alarm company advised the tenant that the hardware was "too old [and] needed to be upgraded." The alarm system was manufactured in 1989.

The alarm company said that only the landlord (as the legal owner of the property) could request an upgrade to the alarm, and that this would cost \$300.00-\$450.00, plus tax.

After corresponding with the landlord about the non-working alarm and the upgrade, the landlord sent a text message to the tenants on August 4, 2017, stating, "Thank you for giving me this information. Right now we don't really need the security system, however if you guys really want to have the security system. You guys can pay for the update price." The landlord did take any further steps toward fixing the alarm system.

In July 2018, the tenant phoned the alarm company again, seeking clarification on whether anyone (that is, the landlord) had called them to arrange to have the alarm system upgraded and made operable. The company advised that "nobody ever called."

The tenant testified that she was unaware of her rights to enforce the terms of the tenancy agreement under the Act until recently, and that is the reason why she took until mid-2018 to file the application.

The tenants testified that having a working alarm system in their home was an important factor in deciding to rent the rental unit; one of the tenants works long hours and wants his wife to be safe when he is out working. The tenants further testified that they have had random strangers come up to their house on several occasions, sometimes as late as 12:30 a.m. They submit that an alarm is important to their safety and wellbeing.

In seeking compensation, the tenants claim \$250.00 per month for 14 months (August 1, 2017 until present) as compensation for an inoperable alarm and submit that \$250.00, while a rather arbitrary amount, is a reasonable portion of the \$5,750.00 monthly rent for not having a working alarm. They also seek an order for a reduction in rent but did not provide me with an amount. Finally, they seek an order compelling the landlord to comply with his obligation under the tenancy agreement to provide an alarm.

The landlord testified that he was aware of the alarm system not working. However, after he contacted the tenants about whether they wanted the system upgraded from a non-working non-monitored system to a working, monitored system, he did not hear back from them. He assumed that the tenants were not interested in pursuing the matter further and that they "must've figured it out."

In his submissions, the landlord argued that due to the tenants' lack of follow-up regarding the alarm, that they must have resolved the issue early on and questioned why the tenants only sought compensation 14 months after the tenancy started. He

further stated that he is “OK to upgrade,” but again objected to the tenants’ raising this issue and seeking compensation long after the tenancy began.

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.

Order for compensation for the landlord not providing a working alarm

The tenants seek a monetary order for compensation for the landlord not having provided a working alarm system. 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.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party. In deciding whether compensation is due, I must apply the following four-part test:

1. Has a party to a tenancy agreement failed to comply with the Act, the regulation, or the tenancy agreement?
2. If yes, did loss or damage result from that non-compliance?
3. Has the party who suffered loss or damage proven the amount or value of that damage or loss?
4. Has the party who suffered the loss or damage acted reasonably in minimizing the loss or damage?

The tenancy agreement clearly establishes that one of the services included in the rent is a non-monitored alarm system. It must be inferred from the agreement that the non-monitored alarm system must be a working, operable alarm. The tenants testified that the alarm was inoperable from day one of the tenancy. The landlord testified and acknowledged that the alarm system was inoperable.

Section 27(1) of the Act states that a landlord “must not terminate or restrict a service or facility if (a) the service or facility is essential to the tenant’s use of the rental unit as living accommodation, or (b) providing the service or facility is a material term of the tenancy agreement.”

The tenants testified that having an alarm system in their home was an important factor in their decision to rent the rental unit; the landlord did not dispute their submission. Ergo, the landlord breached section 27(1) of the Act and failed to comply with the tenancy agreement. But for the landlord’s non-compliance with the tenancy agreement, the tenants would not have lost value in the tenancy for which they are paying rent.

Regarding the dollar amount of the loss, given that rent of \$5,750.00 includes a working alarm, not having a working alarm therefore reduces the value of the tenancy. The tenants claim \$250.00 per month for each month that the alarm was inoperable. \$250.00 represents a meagre 4.35% of the monthly rent and is, while an arbitrary amount, a reasonable amount to claim for the decrease in value of the tenancy resulting from not having a service that is required to be provided by the landlord.

Regarding whether the tenants acted reasonably in minimizing the loss, I find that they have. The tenants contacted the landlord regarding the inoperable alarm, and the landlord did nothing to correct the situation. Indeed, the landlord indicated that he “[didn’t] really need the security system” and that if the tenants wanted the alarm they were welcome to pay for it. While the landlord objected to the tenants seeking compensation 14 months after the start of the tenancy, it is the landlord who took no steps to comply with the tenancy agreement over the past 14 months.

Taking into consideration all the oral and documentary evidence presented before me, 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 compensation. As such, I grant the tenants a monetary award in the amount of \$3,500.00, pursuant to section 67 of the Act.

Order to reduce rent for a working alarm agreed upon but not provided

Given that I have awarded the tenants compensation, I decline to grant an order to reduce rent, and dismiss that aspect of the tenants’ application with leave to reapply, subject to my order below.

Order requiring landlord to provide working alarm required by tenancy agreement

Section 62(3) of the Act states that the arbitrator “may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.”

The landlord agreed to provide a working alarm system as provided for in the tenancy agreement, and to date he has not provided that service. It is not the tenants’ responsibility to pay for an upgrade or to pay to have an alarm system installed. Rather, it is the landlord’s obligation under the tenancy agreement to do so.

As such, pursuant to section 62(3) of the Act, I order that the landlord install a working alarm system, solely at his expense, no later than October 13, 2018. The landlord must, at a minimum, have a working non-monitored alarm system installed. However, the tenants may pay any additional costs related to having the alarm system monitored by the alarm company, but those additional costs must not be related to the installation of a new alarm system.

Should the landlord fail to comply with the above-noted order by October 13, 2018, I grant the tenants leave to reapply for a rent reduction.

Order for compensation for recovery of the filing fee

I grant the tenants a monetary award of \$100.00 for recovery of the filing fee, which is added to the above-noted award, and calculated in a monetary order as set out below.

Conclusion

I hereby grant the tenants a monetary order in the amount of \$3,600.00, which must be served on the landlord. The order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as a judgment or an order of that court. I hereby order that the landlord install a working alarm by October 13, 2018.

I dismiss the tenants’ application for an order to reduce rent, with leave to reapply should the above-noted order that the landlord install a working alarm not be complied with by October 13, 2018.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: September 19, 2018

Residential Tenancy Branch