



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNDC OLC 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 requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- 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. No issues were raised with respect to the service of the application and evidence on file.

At the outset of the hearing, the tenants confirmed that the tenancy had since ended as of June 30, 2018. The tenants confirmed that the only outstanding issue as per the original application was their claim for monetary compensation and a rent reduction. The tenants advised that since the tenancy has ended they were also seeking a return of the balance of the security deposit. The tenants did not file an amended application to include this claim or amend the amount of the monetary compensation they were seeking. The tenants were advised that this hearing would be limited to the issues still outstanding as per the original application.

Issues

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

Background & Evidence

The rental unit is a two bedroom apartment. The tenancy began on July 1, 2017 with a current monthly rent of \$1425.00 plus \$25.00 for parking payable on the 1st day of each month.

The tenants are claiming an amount of \$2850.00 which is the equivalent of 2 month's rent for lack of heat in the rental unit. The tenants testified that the heat in the rental unit was not working for a five day period beginning on January 16, 2018. The tenants notified the landlord of the issue on January 16, 2018. The tenants testified that they spent time in their vehicles during this period as it was only 15 degrees inside the rental unit. The tenants try to utilize space heaters but they could not get the temperature over 16 degrees. The tenants testified that the heat stopped working again for a second time for a five day period from February 17, 2018 to February 22, 2018. The tenants submitted an e-mail they sent to the landlord close to midnight on February 19, 2018 advising the landlord the heat was not working again. In a response e-mail dated February 20, 2018 at 10:17 a.m. the landlord responded that they had the heat up and running and that they had a technician looking into why it went down.

In addition to the above two incidents, the tenants allege that heat in the rental unit was insufficient during the entire period of January 16, 2018 to February 28, 2018. The tenants testified that the heat only reached 18 degrees during this period. The tenants submit that this was due to the heat radiators not being properly maintained. The tenants testified that the radiators were painted shut which they learned of from the property manager on February 22, 2018. The tenants submit that as per city by-laws, the air temperature inside the rental unit is supposed to be at least 22 degrees. The tenants submitted a complaint to the by-law office. The tenants submit that it wasn't until February 28, 2018 that the property manager fixed the radiator issue and this was the first time they had sufficient heat.

The tenants are also claiming an amount of \$500.00 as a result of a flood in the kitchen of the rental unit on December 27, 2017. The flood was the result of leak from the unit above. The tenants testified that the floors and drywall were soaked. They notified that property manager who came to the unit and ripped out most the drywall around the ceiling and around the kitchen window. The area was left to dry. The tenants submit

that the kitchen area was exposed to the exterior wall making it difficult to cook due to spiders coming from the exposed walls. The tenants submit they had to clean up the initial water mess and also had to clean up every time after the contractors came in to do repair work. After the repair work was completed to the mudding and taping of the drywall, the tenants denied access to the landlord to complete the repairs. The tenants submit the unit was livable and they did not want to live through the rest of the repair work due to allergies.

The landlord acknowledged the heating issue on January 16, 2018 and confirms it was repaired five days later. The landlord testified that a plumber was called right away and he changed a few parts and had the heating system up and running; however, it shut down again two hours later. The plumber tried again but couldn't get it to work. A second plumber was called and it took another two days to get parts after which the repairs were completed and the heating was again working.

The landlord submits that on February 22, 2018 the by-law inspector checked the heating in the tenants unit and found the landlord to be in compliance with the by-laws. The landlord submits that they took appropriate actions to fix the heating immediately and even offered the tenants space heaters which they refused.

The landlord testified they were not aware of the second incident in February 2018 and that all repairs were completed in January.

The landlord's witness, the second plumber, corroborated the landlord's testimony in regards to the January 2018 repair.

In regards to the water leak in December 2017, the landlord testified that they would have had their own cleaners available to do any cleaning work required as a result of the flood and subsequent repair work. The landlord submits that the tenants have not submitted any invoices or evidence of the cleaning work required. The landlord submits that the tenants denied the landlord access to properly complete the repair work.

In reply, the tenants submit that the by-law officer was not called until after the second incident in February 2018, which verifies the second incident.

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.

Pursuant to section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Pursuant to section 65(1)(f) of the Act, if the director finds that a landlord has not complied with the Act, the regulations or the tenancy agreement, the director may issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

The burden of proof in this case lies with the applicant tenants. The landlord did not dispute that there was no heat to the rental unit in for a five-day period in January 2018. I accept the landlord's evidence that they took appropriate action to repair the heating system within a reasonable period after becoming aware of the problem. Even though the landlord took appropriate steps, I find the tenants did suffer a reduction in the value of the tenancy for this five-day period in January 2018.

In regards to the February 2018 incident, I find there is insufficient evidence in support of the tenants' claim that the heat was again not working for a five day period. The e-mail evidence indicates there was an issue with the heating near midnight of February 19, 2018 but it appears to have been rectified by the landlord the next morning. I find the tenants suffered no reduction in the value of their tenancy for this very brief period.

As for the claim for loss for the ongoing heat issue for the period of January 16, 2018 to February 28, 2018, I find there is insufficient evidence that they heat in the rental unit was inadequate for this entire period. Aside from the two isolated incidents of January 16, 2018 and February 19, 2018, there is insufficient evidence to support the tenants claim that the heat was inadequate or that they made any complaints to the landlord outside of these dates.

In regards to the flood incident in December 2017, I find the tenants provided insufficient evidence in support of the mess left behind by the flood and the contractors and the resultant cleaning work required. I find the landlord took appropriate action to repair the damage to the rental unit immediately. I dismiss the tenants' claim that they suffered any loss while the repair work was being completed. Although it may have been inconvenient, I find the tenants still had full use of the rental unit during this period.

As the tenant's continued to occupy and otherwise make use of the rental unit during the five day period in January 2018 when they had no heat, it is difficult to quantify the reduction in the value of their tenancy. At a rate of \$1425.00 per month, the tenants' tenancy is valued at approximately \$45.00 per day. Therefore, a loss of use of the complete rental unit for this five day period would equate to a maximum value of approximately \$225.00. As adequate heating is critical in the winter months, I find the tenants are entitled to the nominal amount of \$225.00 for the reduction in the value of their tenancy.

As the tenants were for the most part not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$225.00. Should the landlord 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: September 7, 2018

Residential Tenancy Branch