Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant seeks compensation under section 67 of the Act for (1) an illegal rent increase that was paid over eleven months, and (2) for the value of two months' rent due to no hot water being supplied. The tenant also seeks compensation under section 72 of the Act for the filing fee.

A dispute resolution hearing was convened, and the landlord and tenant attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues were raised in respect of the Notice of Dispute Resolution Proceeding package and its service.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the tenant entitled to compensation under section 67 of the Act?
2. Is the tenant entitled to compensation under section 72 of the Act?

Background and Evidence

The tenant seeks compensation in the amount of $2,650.00 comprised of the following:

1. 11 months' worth of overpayment of rent ($50.00 x 11 months = $550.00)
2. 2 months' worth of rent ($1,000.00 x 2 = $2,000.00)
3. Cost of the filing fee ($100.00)

The tenant testified that the tenancy commenced on September 1, 2016 and ended on September 30, 2018. Monthly rent as per a written tenancy, which was submitted into evidence, was $1,000.00. The tenant paid a security and pet damage deposit, both of which were returned to the tenant. The tenancy agreement indicated that in addition to the rent, the tenant was responsible for 40% of the utilities (BC Hydro and Fortis).

In October of 2017 the landlord knocked on the tenant's door and advised him that rent would increase by $50.00 starting November 1, 2017. He testified that he was given no formal notice but was simply told verbally. Not knowing his rights under the Act, he acquiesced to the rent increase. After exploring what a landlord's obligations are in respect of implementing a rent increase under the Act, the tenant sought to recover this overpayment of $50.00 for each of the months that he paid the higher rent. That is, for the eleven months from November 2017 to September 2018, inclusive.

On August 6, 2018, there was a flood in the lower level of the house, in which the tenant's rental unit was situated. Water had to be shut off. The tenant testified that there was no water, and no hot water from the date of the flooding until he decided to formally move out on September 14, 2018, though he explained that he basically had to move out on August 6 due to there not being any water. The only time that there was water (hot and cold) was August 1 to August 6, inclusive. As a result of there being no hot water the tenant had to drive to his ex-girlfriend's residence to take showers.

The landlord testified that at the start of the tenancy it was understood by the parties that the tenant was to find a second roommate (the rental unit is a two-bedroom and one-bathroom property). Contingent upon there eventually being a second tenant, the landlord set a "lower" rent amount at $1,000.00, and that it would "return" to its regular amount of $1,050.00. After a significant amount of time had elapsed, the tenant decided that he preferred living without a roommate. The landlord said that rent would have to increase to $1,050.00, and that the tenant "had no issues [. . .] he said OK" with the $50.00 monthly increase. However, the tenant agreed to this increase so long as the landlord agreed not to raise the rent the following year. The landlord thought that a new tenancy agreement reflecting this change might be prudent, but ultimately no new agreement was ever executed.

The landlord commented that he has no documentary evidence in relation to any conversations that may have occurred between the parties in relation to the $50.00 rent increase.

In respect of the flooding and the water issues the landlord testified that they had to turn the water off to fix the problem. The landlord disputed the tenant's version of events that there was no water for the whole duration of August and September. He testified that there was water, but not hot water. He tried to fix the water issue as soon as possible. In the landlord's opinion, the entire water was shut off for approximately a week, and that the hot water was unavailable for a period of three additional weeks.

The landlord testified that he empathized with the inconvenience borne by the tenant for there being no hot water, and in attempt to help out he paid the tenant's portion of the utilities for the last two months.

In rebuttal, the tenant testified that the landlord never brought any new tenancy agreement to him to sign. He reiterated that the only time and way the rent was increased was verbally after the landlord knocked on his door. He also pointed out that he was without water for a period of 7 weeks, of which 6 of those weeks there was no hot water.

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.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, 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.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, for me to consider whether to grant compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

Claim for Illegal Rent Increase

Sections 41 to 43 of the Act set out the specific legal requirements that landlords are required to follow in order to increase rent. Section 41 states that a landlord "must not increase rent except in accordance with this Part." Section 42(2) and section 42(3) read as follows:

> (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
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> (3) A notice of a rent increase must be in the approved form.

Section 43(5) of the Act states that “If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.”

In this case, the landlord gave “notice” to the tenant that rent would increase by knocking on his door and letting him know that rent would increase by $50.00 the next month. The evidence is clear and incontrovertible that the landlord failed to comply with the Act in respect of increasing the rent. That there was some sort of understanding between the parties at the start of the tenancy that rent would increase to, or, return to a baseline of $1,050.00 when a roommate was secured, is irrelevant. The tenancy agreement clearly states that monthly rent was $1,000.00; there is nothing on the tenancy agreement or elsewhere in the evidence suggesting that the $1,000.00 rent was conditional.

It cannot be overstated that the parties were bound by the terms of the tenancy agreement. To summarize, the landlord breached the Act and the tenancy agreement by illegally increasing the rent. The tenant would not have suffered the loss of $50.00 per month over a period of eleven months but for the landlord imposing the rent increase. The tenant has established the value of his loss. Finally, there is little that the tenant could have done to minimize his loss but for to pay the illegal rent and recover the amount through the dispute resolution process under the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim that he is, pursuant to sections 43(5) and 67 of the Act, entitled to recover the increase in rent for the period of eleven months, in the amount of $550.00.

Claim for Two Months’ Rent for No Hot Water

In respect of this claim, the tenant testified that he had no hot water for a period of 6 weeks. The landlord disputed this and testified that there was no hot water for a period of 3 weeks. The parties both agreed that water was shut off on August 6, 2018. There is no documentary evidence submitted by either party to definitively establish the date on which the water (hot or cold) was returned to service.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the tenant has failed to establish that the water (hot and cold) was shut off longer than a period of four weeks. Based on the evidence before me, I find that the tenant was without any water for a period of one week and without any hot water for an additional period of three weeks.

As noted in the tenancy agreement, the monthly rent includes water. Presumably, this means hot and cold water. The tenant claims that he was unable to reside in the rental unit for almost two months due to the unavailability of the hot water, and thus he is entitled to the rent that he paid for August and September 2018.

While I note that the parties spent a considerable portion of their testimony on matters related to who lived in their respective rental units, and a considerable part of their testimony having to do with whether the landlord was doing everything he could do to repair the water problem, most of this is, in fact, moot. The issue is rather more straightforward: did the landlord comply with the Act or the tenancy agreement?

The tenancy agreement included water in the monthly rent. The landlord failed to provide water. The only matter to be determined, then, is the value of the 4-week loss of hot water.

The full monetary value of a tenancy agreement is the amount of rent paid by a tenant to the landlord in exchange for exclusive use of a rental unit, along with all services and facilities included in the rent. If, for example, a landlord removed a tenant's access to, and use of, the rental unit and all included services and facilities for an entire month (including a situation where a landlord refuses to make necessary repairs), then the value of that loss might be a full month's rent. However, if a service of facility is only temporarily restricted, or if repairs eventually took place, then the amount reduced would only be a portion of the full value of a tenancy for which rent is being paid.

In this case, while four weeks (or six, or eight week) without hot water was undoubtedly a major inconvenience (made even more so by the tenant's having to visit his ex-girlfriend in order to shower), there is no evidence that the tenant was unable to otherwise reside in the rental unit. Hot water, while included in the rent, comprised but one of many components of the tenancy. Therefore, even though hot water was unavailable for a full month, or longer, the value of this loss would not be equal to a full month's rent. Here, the tenant is entitled to some recovery for the loss of what he was paying for in rent, but not for the amount claimed.

It is up to the party claiming for compensation to prove that such a loss occurred, and the amount, and here I find the tenant has not shown this loss was the equivalent to two months' worth of rent. Nevertheless, I find the tenant suffered a loss and I will accordingly award a nominal amount.

I find that the tenant is entitled to nominal compensation in the amount of $250.00 for the landlord's failure to provide hot water as required by the tenancy agreement.

Claim for Recovery of the Filing Fee

As the tenant was partly successful in his application I grant a monetary award in the amount of $75.00 for the filing fee, pursuant to section 72 of the Act.

Conclusion

I hereby grant the tenant a monetary order in the amount of $875.00 ($550.00 + $250.00 + $75.00 = $875.00), which must be served on the landlord. The order may be filed in, and enforced as an order 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 Act.

Dated: February 5, 2019

Residential Tenancy Branch