



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT OLC

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for loss, emergency repairs, or other money owed 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; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

DM attended the hearing on behalf of all tenants. Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. Although the tenants were not served with the landlord's evidentiary materials, both parties consented to the admission of all evidentiary materials for this hearing, and were ready to proceed.

Issues(s) to be Decided

Are the tenants entitled to monetary compensation for loss, emergency repairs, or other money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began 3 years ago, with monthly rent currently set at \$1,000.00. The current landlord took over the tenancy when he purchased the home in 2017. The tenants reside in the upstairs portion of the home.

The tenants testified that the furnace stopped working, and the downstairs tenant kept requesting that the tenants turn up the heat as the thermostat is upstairs, while the furnace is downstairs. The tenants testified that although they had the thermostat turned up, the tenants downstairs were still very cold. Both parties submitted text messages to support the communication between both parties about the problem. The tenants communicated to the landlord on December 3, 2018 that despite the fact that the thermostat was set at 25 degrees Celsius all week, it was still very cold.

The tenants informed the landlord, and the landlord responded that he would send his friends over to check on the furnace, but nothing changed. The tenants testified that the downstairs tenants had started accusing them of tampering with the thermostat. After two attempts by the landlord to repair the furnace, the upstairs and downstairs tenants got into a heated dispute since both parties still did not have any heat.

The tenants testified that they contacted the landlord again, who was out of the country. The landlord confirmed that the tenants contacted him on January 11, 2019, and he had received a voicemail from BT, one of the tenants. The landlord testified that since he was overseas he could not answer his phone calls. The landlord testified that the voicemail from BT stated that she would pay for the repairs herself. The landlord testified that he had intended to send someone to repair the furnace himself, and did not consent to the repairs. The tenants testified that their message to the landlord was that they would pay for the repair themselves first, and request reimbursement after for the expense.

The tenants are requesting monetary compensation in the amount of \$252.00 for reimbursement of furnace repairs. The tenants included an invoice in the amount of \$252.00, dated January 13, 2019.

Analysis

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system...

(v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1)(c) of the *Act*, the failed furnace may be considered emergency repairs.

I have considered the sworn testimony of both parties as well as the documentation provided for this hearing. I am satisfied that the tenants had informed the landlord of the lack of heat in the home, and I find that the landlord was aware of the problem since December 2018. It was undisputed that the landlord had attempted to fix the problem on two occasions with no success. It was also undisputed that the tenants still had no heat as of January 11, 2019, and attempted to contact the landlord at the number provided by the landlord, but the landlord was not in the country, and could not accept phone calls.

Although the landlord was out of the country, as stated above, the landlord still has a duty to repair and maintain his rental property, as well as perform emergency repairs. Although I accept the testimony of the landlord that he could not accept phone calls, the landlord failed to provide an emergency contact to the tenants of a designated person who can answer a phone call in the case of an emergency. I am satisfied that the tenants had given the landlord ample opportunity to address the issue, which falls under section 33 (1) of the *Act* as an emergency repair. It was undisputed that the landlord was aware of the problem, and the issue was not fixed after two attempts by the landlord. I find that the tenants attempted to call the landlord to inform him the problem was still not fixed, but the landlord failed to respond within a reasonable amount of time. I am not satisfied that the landlord provided sufficient reason for why he could not answer his phone calls, or provide an alternate emergency contact. Although the landlord may have interpreted the tenant's message as a statement that the tenants would pay for the repairs themselves, I am satisfied that the tenants have met the requirements for reimbursement under section 33 of the *Act*. On this basis, I find that the tenants are entitled to reimbursement of the \$252.00 paid for furnace repairs. As the tenants were successful with their claim, I find that they are also entitled to recover the filing fee for this application.

Conclusion

I allow the tenants to implement a monetary award of \$352.00 for reimbursement of the furnace repairs and recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$352.00, and the landlord must be served with **this Order** as soon as possible. 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: April 2, 2019

Residential Tenancy Branch