



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN APARTMENT PROPERTIES REAL ESTATE INVESTMENT
TRUST
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, MNDC, FF

Introduction

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

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

The tenant and the named landlord, K.D. attended the hearing via conference call and provided testimony.

It was clarified that the tenant had incorrectly named the landlord, K.D. who was only an agent of the 1st named landlord. As such, both parties consented to the tenant's application removing the 2nd named landlord, K.D. from the application for dispute. The landlord's agent, K.D. attended on behalf of the named company.

Both parties confirmed the tenant served the landlord with the notice of hearing and the submitted documentary evidence in person on April 24, 2019. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail on May 7, 2019. Neither party raised any service issues. I accept the undisputed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

At the outset, the tenant's application was clarified. Both parties confirmed that the hot water issue was resolved and that the tenant no longer requires an order for emergency repairs. The tenant's request for an order for the landlord to comply with the Act, regulations and/or tenancy

agreement was also resolved as it relates to the tenant's request to provide hot water. As such, these portions of the tenant's original application were cancelled at the tenant's request. No further action is required.

The hearing proceed on the remaining issues; a monetary claim and recovery of the filing fee. The tenant's monetary claim was clarified as he seeks \$1,700.00 in compensation for each of the 17 rental units in the rental property. The tenant's claim was addressed and the tenant informed that he could only seek compensation regarding his own tenancy. The tenant agreed and amended his claim to \$100.00 for the loss of hot water and the recovery of the \$100.00 filing fee.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks monetary claim of \$100.00 for compensation for the loss of hot water and recovery of the \$100.00 filing fee.

The tenant provided evidence that the hot water was not available on April 13, 2019 at 8:55pm and was reported to the landlord at 9:10pm on Saturday, April 13, 2019 via telephone. The landlord confirmed that the tenant notified the landlord via the emergency after-hours telephone line. The tenant stated that as a result of no hot water, he was forced to boil water and have a bath. The tenant stated that he boiled water using a 20 liter and 10 liter pots to have a bath. The tenant again contacted the landlord on Sunday, April 14, 2019 at 9:17pm when there was still no hot water. The tenant stated that again as a result of no hot water, he was forced to boil water and have a bath. The tenant confirmed that on Monday, April 15, 2019 hot water was restored. The tenant seeks \$100.00 in compensation as the landlord has failed to restore the hot water in a timely manner. The tenant stated that the amount of compensation was not for any actual losses or expenses, but was "an incentive" for the landlord to perform repairs timely and for the inconvenience of the tenant.

The landlord disputed the tenant's claim stating that upon being notified on April 13, 2019, onsite maintenance attended on Sunday, April 14, 2019 and determined that the boiler was not functioning. The landlord stated that the boiler was installed within the last 6 months and was under warranty. The vendor was contacted and attended. It was determined by the vendor that

there was a malfunction in the pump and it needed to be replaced. The vendor notified the landlord that a replacement pump could not be obtained until Monday, April 15, 2019. The landlord confirmed that the vendor attended Monday, April 15, 2019 with a replacement pump and the hot water issue was resolved. The landlord has argued that the landlord had responded in a timely and reasonable manner and was not able to replace the malfunctioning pump until Monday, April 14, 2019 as the part was not available on the weekend.

The tenant has argued that the landlord has not provided any evidence to support the claim that the part was not available on the weekend. The landlord provided testimony that he contacted a local plumbing store and was told that plumbing parts were available on the weekend. The tenant was not able to determine if the actual pump was available as he was not made aware of the actual pump specifications.

The landlord has submitted a copy of an invoice from a contractor/vendor showing that the boiler was repaired on April 15, 2019. The landlord stated that as the boiler issue was under warranty, using a third party provider to obtain the part was not an option.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Both parties confirmed the tenant notified the landlord of “no hot water” on Saturday, April 13, 2019 and the landlord’s agent attended on Sunday, April 14, 2019 to investigate the issue. The landlord provided undisputed testimony that the boiler was replaced recently and was under warranty. That vendor was contacted to attend and inspect it. The vendor determined that a malfunctioning pump was the cause and that it was to be replaced the next day as the necessary part/pump was not available.

I accept the undisputed testimony of both parties and find that the landlord was notified of the issue on Saturday, April 13, 2019 at 9:10 pm. The landlord responded on Sunday, April 14, 2019 via an onsite agent. The vendor was in attendance on Sunday, April 14, 2019 and it was determined that there was malfunction of the pump. The landlord was notified by the vendor that a part could not be obtained until Monday, April 15, 2019. Both parties confirmed the hot water issue was resolved on Monday, April 15, 2019.

In this case, the tenant has claimed that the landlord did not respond and resolve the hot water issue in a timely manner. The landlord has argued that all reasonable efforts were made, but that the availability of the replacement part was not within their control.

I find that the tenant has failed to establish a claim for compensation for the loss of hot water for the landlord failing to make repairs in a timely manner. In this case, both parties have confirmed that a loss did occur, however, I find in the circumstances that the landlord did respond and resolve the hot water issue reasonably over an approximately 36 hour period. Although the tenant argued that plumbing parts were available on the weekend, the tenant has confirmed that he was not aware of the particular part in this case was available. The tenant failed to provide sufficient evidence detailing the \$100.00 monetary claim. In the absence of this evidence and that the landlord was dealing with the original vendor who had provided the boiler as it was under warranty, the tenant's application is dismissed.

Conclusion

The tenant's application is dismissed without leave to reapply.

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: May 17, 2019

Residential Tenancy Branch