



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AWM ALLIANCE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT MNDCT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order for the return of all or a portion of the tenant's security deposit pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

The parties both testified that a dispute regarding the return of the security deposit was resolved prior to the hearing. Accordingly, the tenant's application for an order for the return of the security deposit was dismissed.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenant moved into the rental unit on October 1, 2017 and he moved out on February 28, 2019. The monthly rent started at \$1608.20 and it increased to \$1,643.65 by the end of the tenancy.

The tenant complained of heating problems throughout the tenancy. The tenant provided numerous emails documenting ongoing problems with the heat. The tenant testified that he was without adequate heat for 188 days of his tenancy which the tenant testified was 35% of the duration tenancy.

The tenant testified that the landlord provided a portable electric heater but this was not sufficient. The tenant testified that his rental unit has 15 foot ceilings so the heat from the electric heater dissipated to the ceiling without providing adequate heat. The tenant testified that the temperature was so low that he was forced to stay at a relative's property during cold weather.

The landlord testified that there was an ongoing problem with the heating system but it was beyond their control. The landlord testified that they did everything they could to repair and provide electric heaters. The landlord questioned the extent of the days without heat that the tenant testified to.

The landlord testified that he believed that the heat was not available for far less days than the tenant claimed. However, the landlord was unable to specific dates as the when the heating system was not functioning and the landlord did not provide building maintenance records as evidence. Furthermore, the landlord testified that they responded to each of the tenant's heating complaints and in each case the landlord confirmed that the heating was not working as the tenant had complained.

The tenant also complained that the parking area was not secure and the public had access to the garage during certain hours and the security fob was not needed to access the elevator. The landlord testified that the parking garage was always secure because there was an additional gate which was always locked.

The tenant claimed compensation of two months of rent, being \$3,287.30 (\$1,643.65 x 2) for his loss of use and enjoyment of the rental unit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. 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.

Section 65(1)(c) and (f) of the *Act* allows me to issue a monetary award to reduce past rent paid by the tenants to the landlords if I determine that there has been a reduction in the value of a tenancy agreement. The tenant has requested compensation for lack of heating in the rental unit which the tenants contend have reduced the value of the tenancy agreement.

Section 32 of the *Act* states that a landlord must maintain the property in a manner that “...complies with the health, safety and housing standards required by law.” This requirement includes that provides an essential service such as heating.

I find that the landlord did not provide adequate heating for significant portions of the tenancy. In this matter, the parties provided conflicting testimony regarding the extent of the heating problems. However, I find the tenant’s evidence more persuasive as the tenant provided specific dates documenting his complaints which were corroborated by emails. The landlord was unable to provide specific dates and details. Accordingly, I find that the landlord has failed to provide adequate heating for extensive periods during the tenancy.

Furthermore, I find that provision of heat during the winter months is an essential and integral part of the tenancy agreement and I find that the tenant was deprived of heat for

multiple winter months during this tenancy. I do not find that provision of an electric heater to be an adequate mitigation of the heating problem. I find the tenant's uncontroverted testimony that the electric heater did not provide adequate to be credible.

I find that tenant is entitled to a 100% refund of the rent paid for winter months in which the tenant was not provided with heat. However, since the tenant has only requested compensation for two months, and I find that the tenant is entitled to compensation for more than two months, I shall grant the tenant's request for compensation in the amount of \$3,287.30 (\$1,643.65 x 2) as requested.

In regards to the tenant's claim regarding building security, I find that the tenant has failed to establish that the provision of security is a required service or facility under this tenancy agreement. Accordingly, I dismiss the tenant's claim regarding the provision of building security.

Since the tenant has generally prevailed in this matter, I grant the tenant's application for reimbursement of his filing fee.

Accordingly, I grant the tenant a monetary order for \$3,387.30, as calculated below.

<u>Item</u>	<u>Amount</u>
Damages for lack of heat	\$3,287.30
Filing fee	\$100.00
Total	\$3,387.30

Conclusion

I grant the tenant a monetary order in the amount of **\$3,387.30**. If the landlord fails to comply with this order, the tenant may file the order in the Provincial Court to be 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: July 06, 2019

Residential Tenancy Branch