



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNDCT, MNSD, FFT

Introduction

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

- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security and pet damage deposits (the deposits) pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlords confirmed that on June 15, 2019 they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail, I find that the landlords were duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written and photographic evidence, I find that the written and photographic evidence was served in accordance with section 88 of the *Act*.

Preliminary Issue - Application to Obtain a Return of the Security Deposit for this Tenancy

At the commencement of this hearing, I advised the parties that the issue of who is entitled to the deposits for this tenancy is already before another Arbitrator appointed pursuant to the *Act*. The landlords applied to retain the tenants' deposits before the

tenants submitted their application on May 28, 2019. On June 14, 2019, the other Arbitrator seized of that matter heard evidence from the parties with respect to the landlords' application, which included a request to retain the deposits,. In that Arbitrator's Interim Decision of June 14, 2019 (see file reference above), the landlords' application was adjourned to September 27, 2019, as that Arbitrator was unable to complete their hearing of the parties' testimony on June 14, 2019.

Since all issues associated with the return of the deposits is currently before another Arbitrator appointed pursuant to the *Act*, I advised the parties that I was unable to hear the tenants' application to obtain their deposits from the landlords. Any issues relating to the deposits need to be addressed to the Arbitrator seized of that matter who has been delegated responsibility to consider the landlords' claim to retain the deposits. As such, I have not considered the tenants' application to obtain a return of their deposits.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for emergency repairs they undertook during this tenancy? Are the tenants entitled to a monetary award for losses or other money owed arising out of this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The parties agreed that they entered into a one-year fixed term Residential Tenancy Agreement (the Agreement) for a tenancy that was to run from February 2, 2018 until January 31, 2019. Monthly rent was set at \$2,000.00, payable in advance on the first of each month.

The tenants' application for a monetary award of \$2,139.11 included the return of the tenants' \$1,500.00 in deposits, which, as noted above, is already being considered as part of the other hearing of the landlords' application. The tenants' application also included a request for the reimbursement of \$327.41 in expenses they incurred for food, fuel and ferry costs arising out of a two day period when they left the rental unit near the beginning of this tenancy when the water heater in this rental unit was being replaced. They provided receipts and a detailed breakdown of how they arrived at this \$327.41 claim. Their application also included an application for \$311.70 in emergency repairs that they maintain needed to be done to replace a kitchen faucet. This included the \$154.00 cost of the faucet, \$7.70 in GST and \$150.00 for three hours of Tenant LC's time to replace the existing faucet.

The tenants entered written evidence and sworn testimony that they discovered when they took possession of the rental unit that the existing water heater was leading to discoloured water. When they looked into this matter, they found out that the existing water heater had been installed in or about 2002, and was ready for replacement. They contacted the landlords who were travelling abroad, and obtained the landlords' permission to have the hot water replaced, with the costs to be charged to the landlords. Although the landlords provided evidence that the plumbing company advised the landlords that the removal and replacement of the water heater would be a three hour job, Tenant LC (the tenant) asserted that they were given a two day time period by the plumber as to when this work would happen. Facing the prospect of their loss of access to water in the rental unit for this period of time, the tenants travelled on a BC Ferry to stay with parents, which they believed would be the most reasonable and economical option for temporary accommodation while the water would be turned off in the rental unit. The tenant also noted that they were able to obtain a cheaper rate from the plumbing company that they hired to have this work performed than the public would pay for such work. The tenant testified that the plumbers' work extended to two days due to the complexity of the work and that carpentry work had to be done in order to make room for the larger hot water tank that was installed with the landlords' permission. Landlord RB testified that the tenants never advised them that they were intending to seek reimbursement from the landlords for the cost of travelling to the Lower Mainland on a BC Ferry to visit their children's grandparents.

The tenant testified that their spouse, the other tenant, contacted them one day in March 2018 when the kitchen faucet "exploded." With water covering everything, the tenants decided that this faucet, which the tenant described as being old and wobbly, needed to be replaced. Since the tenants knew that the landlords were travelling abroad, they did not alert the landlords to this problem nor seek their authorization to have it repaired or replaced, or to perform the work themselves and have the landlords pay for this work.

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. In this case, the onus is on the tenants to prove on the balance of probabilities that they were entitled to a monetary award for emergency repairs they undertook or losses that they incurred for which they should be compensated by the landlords.

Section 32 of the *Act* reads in part as follows:

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...

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

The tenants' claims for compensation would seem to rely on section 33 of the *Act*, the relevant portions of which are as follows:

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,...

(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.

(4)A landlord may take over completion of an emergency repair at any time.

(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);

(c)the amounts represent more than a reasonable cost for the repairs;...

In this case, there is undisputed sworn testimony and written evidence that the tenants did have access to a means through text messages whereby the tenants could obtain the landlord's permission to replace the water heater when the landlords were travelling abroad. The landlords did agree to the replacement of the water heater in the rental unit. However, there is no evidence that the parties discussed any measures that the tenants would need to take to relocate temporarily while the water heater was being repaired. In fact, the landlords provided undisputed written evidence in the form of an April 3, 2018 text message exchange in which the tenants advised the landlords that "We went back to Vancouver for a couple of days to visit the grandparents." Based on the history of text messages between the parties surrounding the water heater issue, I find that the tenants did not give the landlords any opportunity to arrange for alternate accommodations for the tenants in the event that their rental unit would be unusable for the short period when water was unavailable in this rental unit. The landlords certainly never agreed to assume the tenants' costs in travelling to and returning from the Lower Mainland by BC Ferry, or purchasing food and fuel during their trip to visit the tenants' family members, described in their text message to the landlords as a visit with grandparents. Under these circumstances, I dismiss the tenants' application for a monetary award for their incursion of travel, food and fuel costs, which the tenants maintained resulted from their lack of water for a two day period of their tenancy.

The broken faucet may very well have constituted a situation necessitating emergency repairs in accordance with paragraph 33(3)(a) of the *Act*. However, as outlined above, there is a process established pursuant to paragraph 33(3)(b) and (c) of the *Act*, which tenants need to follow before they can initiate emergency repairs and subsequently obtain reimbursement for the completion of such repairs. I give little weight to the tenant's sworn testimony that they decided to not bother the landlords with such issues while the landlords were enjoying their lengthy vacation abroad. Based on the interaction between the parties with respect to the water heater, there is clear evidence that the landlords were available by text message, and on that basis, by telephone had the tenants tried to obtain their approval to undertake emergency repairs to the kitchen faucet. By their own admission, they chose not to contact the landlords about the kitchen faucet issue, and instead, proceeded to undertake these emergency repairs without notifying the landlords. On this basis, I dismiss the tenants' claim for the replacement of the kitchen faucet in accordance with paragraph 33(6)(a) of the *Act*, as I find that the tenants did not satisfy the requirements of either paragraph 33(3)(b) or (c) of the *Act*.

Since the tenants' application has been unsuccessful, I make no order to allow the tenants to recover their filing fee from the landlords.

Conclusion

I have no jurisdiction to consider the tenants' application to obtain a return of their deposits as this matter is currently before another Arbitrator appointed pursuant to the *Act*. I dismiss the remainder of the tenants' application 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: September 11, 2019

Residential Tenancy Branch