



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTH CARIBOU REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on January 8, 2020, wherein the Tenant sought a rent reduction for services or facilities not provided and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 11:00 a.m. on March 6, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was represented by two property managers, N.J. and L.G.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord for loss of services or facilities?

2. Should the Tenant recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began February 1, 2019. Monthly rent was payable in the amount of \$820.00 and the Tenant paid a \$410.00 security deposit.

The documentary evidence filed indicates that on December 6, 2019 one of the large hot water tanks ceased working at the rental building. It was replaced on January 3, 2020.

The Tenant claimed that as a result of the inoperable hot water tank she had to have cold showers. She further stated that works in a hospital laboratory which is why it is essential that she be able to have hot showers. She also stated that she had to boil water for dishes.

The Tenant sought \$410.00 in compensation she felt that a 50% reduction was reasonable for lack of hot water for a month.

In response to the Tenant's claims, N.J. provided affirmed testimony on behalf of the Landlord. She confirmed that the building has two large hot water tanks. She stated that one of the tanks was leaking and when they discovered this on December 6, 2019, they immediately ordered a replacement tank. The owner paid for expedited shipping to have the tank arrive as quickly as possible. N.J. stated that the Landlord did all they could to resolve this as quickly as possible and did not breach their obligations.

N.J. confirmed there are 20 units in the rental building. N.J. stated that there was still hot water in the building as the other tank was operable. She stated that some tenants who could shower at non peak times, such as at lunch, could have warm showers. Those who showered in the morning were most impacted and at times were not able to have hot showers.

N.J. noted that they simply asked tenants to wash their clothes on cold water to preserve the hot water for showers and dishes, etc.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case the Tenant sought return of one half of the amount paid for rent, during a month when only one of two large hot water tanks were working at the rental building.

She claimed she was not able to take hot showers and was forced to boil water to wash her dishes. She also stated that this was of particular concern to her as she works in the medical field.

The Landlord's representative testified that immediately upon being informed of the issue with one of the hot water tanks the Landlord ordered a replacement. Due to its size, the tank did not arrive for nearly a month. The Landlord submitted that they acted reasonably and did all they could to resolve the issue as soon as possible. The Landlord's representative also noted that the other hot water tank was operable, and while they asked tenants to wash clothing in cold water, there was minimal impact on the tenants.

Section 27 of the *Act* provides that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement. If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days' notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

I accept that one of the hot water tanks was inoperable from December 6, 2019 to January 3, 2020; however, I find that this was temporary in nature and not intended by the landlord to be a permanent withdrawal or restriction of that service.

I also find the Landlord acted reasonably and attended to the required repairs as quickly as possible. In doing so, I find the Landlord fulfilled their obligation under section 32 of the *Act* to repair and maintain the rental unit.

I further find that there were times when the tenants were without hot water due, such as in the morning when many tenants were attempting to shower and get ready for work. However, I accept the Landlord's representative's testimony that depending on when a shower was taken a tenant could have had hot water.

In all the circumstances I am unable to find the Landlord breached the *Act*. Further, while a limitation on hot water was undoubtedly inconvenient and frustrating for the Tenant, I find she has submitted insufficient evidence to support a finding that she should be reimbursed one-half of her monthly rent due to this inconvenience.

For these reasons I dismiss the Tenant's claim for monetary compensation. As she has been unsuccessful in her claim, I also dismiss her request for return of the filing fee.

Conclusion

The Tenant's claim is dismissed.

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: March 06, 2020

Residential Tenancy Branch