



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metcap Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT MNDCT RP RR

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

AS appeared for the tenants in this hearing, while KW represented the landlord. During the hearing, the landlord confirmed the legal name of the landlord. As neither party was opposed, the tenants' application was amended to reflect the name of the landlord. I noted that the tenant had some difficulty communicating in the hearing as English is not his first language. The tenant confirmed that he was able to proceed without a translator. Both parties were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

As the parties were in attendance I confirmed that there were no issues with service of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues

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

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

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

Are the tenants entitled to an order requiring the landlord to make repairs to the rental unit?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on April 15, 2015. Monthly rent is currently set at \$1,476.00, payable on the first of every month. The tenants paid a security deposit in the amount of \$680.00, which the landlord still holds.

The tenants are seeking an order for the landlord to perform repairs and an inspection as the rental unit is not heated to their desired temperature. The tenant testified that despite his requests, and the inspections performed by the landlord, the tenant testified that his rental unit was often only 18 to 22 degrees Celsius. The tenants provided photographs of the temperature reading and his thermostat. The tenant testified that he felt cold, and wanted the rental unit to be at least 25 degrees Celsius. The tenants believe that there may be a problem with the windows in the building, which was built in 1977. In addition to repairs, the tenant is also requesting a rent reduction of half of the monthly rent for the lack of proper heating in his rental unit.

The landlord testified that they had responded immediately to the tenants' requests, and have fulfilled their obligations to ensure everything was in working order, and that the tenants had access to proper heating in their rental unit. The landlord provided a detailed outline of the steps taken since November 2019 when the tenants first made a request to the landlord to inspect the lack of heat in his rental unit.

The landlord also provided the report from the company that attended to inspect the heating in the tenants' rental unit. Both the landlord and the president of the company confirmed that the heating in the rental unit met the legal requirements, which is "21.5°C during the day and 18°C during the night".

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter " tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bears the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

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.

I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

As stated above, the tenant applicants have the burden of proof in supporting their claim for a rent reduction and monetary compensation. Although the expectations of the tenants have not been met for this tenancy, I find that the landlord has met their obligations under the *Act*, tenancy agreement, and as required by law. I find that the landlord had responded to the tenants’ concerns by investigating the issue, and the contractor had concluded that the heating requirements of the rental unit meet the standards as required by law.

I find that the tenants have failed to provide sufficient evidence to support their claim for a rent reduction or monetary claim. I also find that the landlord has fulfilled their obligations under section 32 of the *Act*. On this basis, I dismiss the tenants’ application for a rent reduction and monetary compensation without leave to reapply. I also dismiss the tenants’ application for repairs without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenants’ application for recovery of the filing fee without leave to reapply.

Conclusion

I dismiss the tenants’ entire 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: April 1, 2020

Residential Tenancy Branch