



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT

Introduction

On April 23, 2020, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

Tenant R.D. attended the hearing. B.S. attended the hearing as well, as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by email on or around April 23, 2020 and B.S. confirmed that the Landlord received this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package. Furthermore, I have accepted this evidence and will consider it when rendering this Decision.

B.S. advised that the Landlord’s evidence was served to the Tenants by email on August 24, 2020, and the Tenant confirmed that he received this evidence. However, this evidence was late, and he was not prepared to respond to it. As this evidence was not served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, this evidence is late. As a result, it was excluded and will not be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As a note, the Tenant was cautioned multiple times for his inappropriate outbursts and interruptions during the hearing. He was warned that any continuation of his

unacceptable behaviour would result in him being muted and only being able to participate in the hearing when permitted to do so.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to monetary compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2018 and ended when the Tenants gave up vacant possession of the rental unit on November 30, 2019. Rent was established at \$6,450.00 per month and was due on the first day of each month. A security deposit of \$3,150.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenant advised that they did not provide a forwarding address in writing to the Landlord. However, it was determined that the Tenants' security deposit was already awarded to the Landlord in a previous Dispute Resolution hearing (the relevant file number is listed on the first page of this Decision). As it was determined in this previous Decision that the Landlord was entitled to apply the security deposit to debts awarded to him, the Tenants' claim for this is a moot point. As a result, this portion of the Tenants' Application is dismissed without leave to reapply.

The Tenant advised that they are seeking compensation in the amount of **\$18,000.00** because they did not have gas or hydro from November 2018 to April 2019, and they did not have this in November 2019 either. He stated that they calculated this amount of compensation as half a month's rent for the time that they did not have these facilities provided to them. He advised that the heating system was powered by natural gas and that this system would routinely stop when the heat consumption was increased. When this happened, he would have to reset the system; however, this problem would continue to occur, multiple times per day.

He stated that he informed the Landlord of these issues by text, email, and verbally in November 2018 and repair people came to investigate the problem. They did not fix this issue as they determined that the whole system needed to be replaced. He stated that one repair person fixed this issue; however, the heat could not be controlled and was on continuously, making the rental unit too hot. This lasted about three weeks, after which time the Tenant turned off the heat as their gas bill was so large.

In addition to not having an adequate source of heat in the rental unit, this problem also affected the heat in the pool and the hot tub. As a result, the Tenants could not use these facilities in the winter either. Moreover, they could not have hot showers or baths. The Tenants submitted copies of text message conversations with the Landlord as proof that this issue was happening and that they advised the Landlord to fix the problem.

B.S. advised that as per the tenancy agreement, the Tenants were responsible for maintenance of the rental unit. In addition, the move-in inspection report indicated that there were no issues with the rental unit. He stated that he could not remember when the Tenant first brought up this heating system issue; however, he stated that in November 2018, he sent repair people right away, from different companies to investigate the issue. He was advised that the problem was fixed.

He stated that a few months elapsed when the Tenant advised him it was not working again. He could not remember the exact date of this; however, a second repair person was dispatched and while he was not sure when this was, he suggested that it was "probably in October 2019."

He submitted that this second repair person fixed the system, but then he provided a contradictory statement when he stated, "In general, there's no big issues, the system worked properly." He reviewed the text messages between him and the Tenants and confirmed that they advised him that there was a problem "maybe four to five times." He stated that he had the two invoices to prove that he sent out repair people to address this problem; however, he could not find one of them and neither were submitted as documentary evidence for my consideration. He stated that an inspector has checked the rental unit and that there have been no heating issues since the Tenants gave up vacant possession of the rental unit.

The Tenant advised that they are also seeking compensation in the amount of **\$923.00** because the heat pump for the hot tub stopped working in May 2019. He stated that he notified the Landlord of this by text, but the Landlord ignored his requests. Based on the lack of response from the Landlord to repair the heating issue, he just fixed the heat

pump himself on May 31, 2019. He stated that the repair person told him that the pump was 20 years old. He submitted a copy of the invoice to support the cost of this item.

B.S. stated that he has an invoice for a repair person that checked for leaks and discovered that the pipe system was frozen. As a result, the heat pump needed to be changed and the Landlord paid for this. He also stated that the Tenants were already compensated for any Landlord neglect and they were given two cheques; however, he was not sure when this was done, but he thinks it might have been in June and July 2019.

The Tenant stated that B.S. was confused as this work that the Landlord completed was in March 2019; however, he replaced the heat pump himself in May 2019.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Section 32 of the *Act* outlines that the Landlord "must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant."

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

Regarding the Tenants' claim for compensation owed to them in the amount of \$18,000.00, I find it important to note that Section 32 of the *Act* requires the Landlord to provide a rental unit that complies with health, safety and housing standards required by law, and this would include providing the Tenants with an adequate source of heat. It is clear from the evidence and from B.S.'s testimony that the Landlord was of the impression that the Tenants would be responsible for fixing problems in the rental unit.

However, the Tenants are only responsible for fixing issues that they have negligently damaged and are not required to fix issues that are faulty due to the Landlord's neglect. While B.S. claimed that any problems with the heating system were fixed immediately, he was unsure of dates or details of what was actually done. As well, he provided contradictory testimony and he repeated that he could not remember details of what happened during the tenancy. I found his submissions to be vague and not compelling or convincing. Moreover, while B.S. stated that a repair person only attended the rental twice to repair issues, I find it important to note that the Landlord responded in a text that "more than three companies came but nothing has been fixed."

Based on the doubts created by B.S.'s submissions, I find that I prefer the Tenants' evidence on the whole. As a result, I am satisfied that there was, more likely than not, an ongoing problem with the heating system, that the Tenants advised the Landlord of this problem, and that this situation was not rectified in a timely manner as required by the *Act*.

In assessing their claim for the \$18,000.00, as noted above, the onus is on the Tenants to submit evidence justifying this amount. However, the Tenant could not adequately explain how they came to this figure. While I acknowledge and accept that there were continual heat issues for a total of six to seven months of the tenancy, that the Tenants did not have use of the pool or hot tub for this period of time, and that they were unable to have hot showers or baths, the Tenants are obligated to demonstrate that they mitigated any loss. However, the Tenant advised that they did not file for dispute resolution because the Landlord kept telling them that he would fix the problem.

Furthermore, I would be more inclined to accept the Tenants' request for a loss equivalent to \$18,000.00 if they did not have heat at all or were unable to have hot baths and showers for this period of approximately seven months. As the Tenants lived through these periods without applying for Dispute Resolution to force the Landlord to fix the issues, I find it more likely that not that the Tenants had intermittent heat and hot water over this period of time, and the loss that the Tenants suffered was from a lack of consistent heat and from the inconvenience of having to reset the system constantly.

As the Tenants did not mitigate their loss, and as I am not satisfied that they suffered from a complete lack of heat or hot water, I do not find that the Tenants have substantiated a loss equivalent to the amount they claimed for. Given that I am satisfied that the Landlord breached the *Act* on multiple occasions up until the end of the tenancy, but given the limited evidence provided by the Tenants that they took any steps to correct the Landlord's contraventions of the *Act*, I find that the Tenants have corroborated a loss equivalent to **\$7,000.00**.

With respect to the Tenants' claims for compensation in the amount of \$923.00 for the replacement of the heat pump, as I am doubtful of the accuracy and reliability of B.S.' testimony, I find it more likely than not that the Tenants did pay to have this heat pump replaced. As such, I grant the Tenants a monetary award in the amount of **\$923.00**.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Compensation for loss of heat and hot water	\$7,000.00
Compensation for heat pump repair	\$923.00
Total Monetary Award	\$7,923.00

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$7,923.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: September 10, 2020

Residential Tenancy Branch