



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNRT, FFT
 MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the adjourned cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). This Decision should be read in conjunction with the Interim Decision dated May 25, 2020.

The Tenants’ Application for Dispute Resolution was made on April 1, 2020. The Tenants applied for the following relief, pursuant to the *Act*:

- for the recovery of their cost of emergency repairs made during the tenancy,
- for a monetary order for money owed or compensation for damage or loss,
- for an order granting recovery of the filing fee.

The Landlords’ Application for Dispute Resolution is dated May 5, 2020. The Landlords applied for the following relief, pursuant to the *Act*:

- for compensation for damage caused by the tenant, their pets or guests to the unit, site or property,
- to recover the money for the unpaid rent,
- for a monetary order for damage to the unit, site, or property;
- for an order allowing the Landlord to keep all or part of the security deposit and pet damage deposit in partial satisfaction of the claim; and
- for an order granting recovery of the filing fee.

One of the Landlords and one of the Tenants attended this hearing and were reminded that their affirmation given during the May 25, 2020, hearing carried over to today’s proceedings.

The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter – Conduct

At the outset of these proceedings, the parties were both cautioned regarding their behaviour during the previous proceedings and reminded of the required conduct throughout these proceedings. The parties are referred to the Residential Tenancy Branches Rules of Procedure regarding conduct that had been included in the interim decision dated May 25, 2020, which states:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing, and the arbitrator may proceed in the absence of that excluded party.

Both parties acknowledged their individual understanding of their required conduct during the proceedings and the consequences for further misconduct.

However, the conduct of both these parties remained an issue throughout these proceedings. This Arbitrator had to caution each party regarding outbursts and not follow directions.

The Tenant continued in their disruptive behaviour, refusing to follow direction from this Arbitrator; their phoneline was muted at 2:53 p.m. The Tenant was invaded back to the proceedings to offer testimony when need; however, their phone line remained muted for the remainder of the hearing.

Preliminary Matter – Jurisdiction

At the outset of the testimony, for the Landlord's claim, it was indicated by the Landlord that several of the items they were claiming were in relation to a secondary agreement/contract between the parties that was not part of this tenancy.

This Arbitrator advised that Landlord that they could not hear matters not related to the tenancy, as the Residential Tenancy Branch only had jurisdiction over matters related to a tenancy. When asked, the Landlord testified that these claimed items were not a part of this tenancy, but that the Tenant believed they were.

This Arbitrator offered three times to hear jurisdictional arguments regarding these items to determine if they were part of the tenancy and under the jurisdiction of the Residential Tenancy Branch; both the Landlord and Tenant refused all three offers to determine the jurisdiction on these items.

The Landlord withdrew all claims related to the secondary agreed between these parties; the Tenant did not object to the Landlord's withdrawal of these claimed items.

I will hear the remainder of the Landlord's claim for unpaid rent and unpaid utility bills.

Issues to be Decided

- Are the Tenants entitled to the recovery of their cost of emergency repairs made during the tenancy?
- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
- Are the Tenants entitled to recover the filing fee?
- Are the Landlords entitled to recover the money for the unpaid rent and utilities?
- Are the Landlords entitled to retain the security deposit?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that the tenancy began on May 15, 2019, as a one-year and two-week fixed term tenancy, that rolled into a month to month tenancy at the end of the initial fixed term. The tenancy agreement records that rent in the amount of \$2,100.00 was due to be paid by the first day of each month, that the Tenants would pay 50% of the utilities for the rental property, and that the Landlord had collected a \$1,050.00 security deposit and a \$600.00 pet damage deposit at the outset of this tenancy.

The Parties also agreed that this tenancy ended on April 24, 2020, the day the Tenant's moved out of the rental unit.

The Tenant testified that on March 1, 2020, the furnace in the rental home stopped working, and that they reported the malfunction to the Landlord the same day. The Tenant testified that they heard back from the Landlord on the evening of March 1, 2020, acknowledging the needed repair.

The Landlord testified that they did receive the Tenants notice that the furnace had stopped working and told them they could make use of the two space heaters; the Landlord had stored on the property, while they looked into having the furnace repaired.

The Tenant testified that they called the Landlord for updates on when a technician would be coming by to fix the furnace on March 2, 2020, and March 3, 2020, but that by the afternoon of March 3, 2020, when they still had no firm indication that the Landlord was taking action to fix the furnace, so they called a technician themselves. The Tenant testified that they called the technician listed on the side of the furnace to attend the rental unit and start repairs that same day. The Tenants testified that their technician advised them that new parts were required for the furnace, that it was unsafe to use the furnace until these parts were replaced, and that the gas had to be turned off due to safety concerns. The Tenant testifies that they advised the Landlord of what their technician had told them.

The Tenant testified that the Landlord technician arrived at the rental unit the following day, March 4, 2020, and that the Landlord's technician took over the repairs. The

Tenants are requesting the recovery of their initial emergency repair costs in the amount of \$156.00. The Tenant submitted a copy of the repair invoice into documentary evidence.

The Landlord argued that they should not be responsible for these technician costs as the Tenants should have left the repair to the Landlord. The Landlord testified that they were working on securing someone to attend the rental unit and effect the required repairs and that their repair person addended the following day.

When asked by this arbitrator, the Landlord testified that they had not kept the Tenants informed on the plans to have the repairs completed between March 1, 2020, to March 4, 2020.

The Tenant testified that the repairs to the furnace were not completed until March 12, 2020, and that their family had to sleep at the homes of friends and family due to how cold the rental unit had become without the furnace. The Tenants are requesting the recovery of their rent between March 1, 2020, to March 12, 2020, due to the fact that the rental unit was too cold to live in during that time.

The Landlord testified that they were taking action to repair the furnace and that they had supplies the Tenants two space heaters as an alternate heat source during this time. The Landlord argued that the Tenants could have also used the gas fireplace for heat. As the Tenants were not without heat during this time, they should not be entitled to the recovery of the rent for this period.

The Tenants testified that the small space hoarders were insufficient to heat the whole home and that the gas fireplace could not be used due to the technician turning off the main gas line.

The Landlord testified that the rent for April 2020 had not been paid for this Tenancy. The Landlord is requesting the recovery of the unpaid rent for April 2020, in the amount of \$2,100.00.

The Tenant testified that they agreed on the rent for April 2020 had not been paid.

The Landlord testified that the utilities for March and April had not been paid for this tenancy. The Landlord is requesting the recovery of the unpaid utilities, in the amount of \$560.66.

The Tenant testified that they agreed the utilities for March and April 2020 had not been paid. The Tenant argued that they should not have to pay the utilities for this period as they had been overcharged for the utilities for the entire tenancy. The Tenant testified that they had agreed to a 50/50 split of the utilities with the Landlord but that the Landlord had moved a third party into the other unit on the property and that they had paid a portion of that person's utility usage.

The Landlord testified that the third person stayed in their portion of the rental property and that any utilities used by this person had been covered in the Landlord's 50% of the bills. The Landlord also testified that the Tenants had never asked them to renegotiate the utility bill split during the tenancy.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have claimed for the recovery of \$156.00 in emergency repair costs and \$1,050.00 in compensation due to the furnace in the rental unit malfunctioning during their tenancy.

I accept the agreed-upon testimony of these parties that the Landlord had received a report from the Tenants that the furnace in the rental unit had stopped working on March 1, 2020. I also accept that on March 3, 2020, when the Tenants, having not heard back from the Landlord, arranged to have a furnace technician attend the rental unit to start emergency repairs. Section 33 of the Act states the following:

Emergency repairs

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,*
 - (iii)the primary heating system,*

- (iv) damaged or defective locks that give access to a rental unit,*
- (v) the electrical systems, or*
- (vi) in prescribed circumstances, a rental unit or residential property.*

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(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.*

Pursuant to section 33 (1) of the Act, I find that a malfunctioning furnace in a rental unit meets the definition of an emergency repair.

Additionally, pursuant to section 33 (3) of the Act, I find three days was a reasonable amount of time for these Tenant to have given these Landlords to start repairs before they commenced their own actions to have the furnace repaired.

Accordingly, I find that the Tenants have proven their entitlement to recover their costs for starting the repair of the furnace in the rental unit, in the amount of \$156.00, pursuant to section 33 (5) of the Act.

The Tenants' have also claimed for the recovery of their rent for the period of time that they were without the use of the furnace, in the amount of \$1,050.00. I accept the

testimony of these parties that the malfunctioning furnace was not repaired until March 12, 2020. Therefore, I find that these tenants were without the use of their primary heating source for the rental unit for 12 days.

I also accept the Tenant's testimony that the loss of the primary heating source for the rental unit, during the winter, severely affected their ability to live in the rental unit during that time and that it would have been reasonable of these Tenants to secure another location to stay at during this time. Accordingly, I award the Tenants the recovery of their full rent for the 12 days they were without the use of their primary heating source for the rental unit, between March 1, 2020, to March 12, 2020, in the amount of \$812.88, at the per diem rate of \$67.74 per day.

Overall, I grant the Tenants an award of \$968.88, consisting of \$156.00 in the recovery of an emergency repair bill and \$812.88 in compensation due to the loss of their primary heating source for 12 days.

The Landlord has claimed for \$2,100.00 in unpaid rent and \$520.66 in unpaid utilities for March and April 2020. Section 26(1) of the Act states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the testimony of the Tenant that the rent for April 2020 and the utilities for March and April 2020 had not been paid for this tenancy. I find that the

Tenants breached section 26 of the *Act* when they did not pay the rent and utilities as required under the tenancy agreement.

I acknowledge the Tenant's argument that they believe that they had paid for the utility usage of a third party residing on the rental property. However, I find that there is no evidence before me, beyond this Tenant's verbal claim, to show that they had been paying for someone else utility usage during their tenancy, which is insufficient to prove their point on this matter.

Therefore, I award the Landlords the outstanding rent and utilities in the amount of \$2,620.66, comprised of \$2,100.00 in rent for April 2020, and \$520.66 in utilities for March and April rent. I grant permission to the Landlords to retain the \$1,050.00 security deposit and \$600.00 pet damage deposit they are holding for this tenancy in partial satisfaction of this award.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. In this case, both the Tenants and the Landlords have applied for the recovery of their respective filing fees for these proceedings. As the nether the Landlords or Tenants have been completely successful in their respective applications, I decline to award either party the recovery of their filing fee for these proceedings.

Overall, I grant the Landlords a monetary order in the amount of \$1.78; consisting of an award of \$2,100.00 in outstanding rent for April 2020, \$520.66 in unpaid utilities for March and April 2020, less the \$1,050.00 security deposit and the \$600.00 pet damage deposit that the tenancy agreement shows the Landlords are holding for this tenancy, and less the \$968.88 awarded to the Tenants in this Decision.

Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlords a **Monetary Order** in the amount of **\$1.78**. The Landlords are provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: October 9, 2020

Residential Tenancy Branch