



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On July 29, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting the return of the security deposit, a Monetary Order for compensation, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that the Tenants submitted.

Preliminary Matters

At the beginning of the hearing, the Landlord testified that he sent an evidence package to the Tenants via registered mail. The Tenants stated that they had an advocate help them coordinate their application; however, had not received an evidence package from the Landlord. The Landlord could not provide any evidence or tracking numbers from Canada Post to support his claim that he had exchanged the evidence package with the Tenants, pursuant to the Rules of Procedure 3.5. Therefore, the Landlord’s digital evidence that had been submitted to the Residential Tenancy Branch was not referenced or admitted into the hearing.

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the following testimony and evidence was heard, and a Decision made by myself (the Arbitrator).

Issues to be Decided

Should the Tenants receive a Monetary Order for the return of the security deposit, in accordance with Section 38 and 67 of the Act?

Should the Tenants receive a Monetary Order for compensation, in accordance with Section 67 of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

I have reviewed all oral and written evidence 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.

Return of security deposit:

The Landlord submitted that the month-to-month tenancy began on December 1, 2019 and continued until the Tenants abandoned the unit at the end of January 2020. The rent was \$1000.00 and due on the first of each month. The Landlord stated that the Tenants were supposed to pay a security deposit in the amount of \$500.00; however, the Landlord has no record of the Tenants paying the security deposit.

The Tenants stated that when they began the tenancy, they paid \$1000.00 cash for the first months' rent and then e-transferred the manager their \$500.00 security deposit. The Tenants acknowledged that they did not have any bank statements to demonstrate the withdrawal of the security deposit funds from their account.

The Landlord stated that he has account records that demonstrate the rent for December 2019 was deposited and that no \$500.00 security deposit was deposited. The Landlord said that he didn't apply for dispute resolution to keep the security deposit at the end of the tenancy as the Tenants did not pay the security deposit.

Monetary Claim for compensation:

The Tenants submitted that the rental unit did not have enough heat sources; therefore, they set up an account with the local natural gas provider so the standalone gas fireplace in the living room (the "fireplace") would work. The fireplace was working and heating the unit as of December 15, 2019.

The Tenants testified that in early January 2020, they noticed some noxious odours and spoke with the manager of the residential property about a possible gas leak coming from the fireplace.

The Tenants stated that Tenant SJ “blacked out” in the rental unit on January 23, 2020 and was taken to the hospital. In the Tenants’ written submissions, the Tenants report that Tenant SJ collapsed on January 15, 2020. The Tenants testified that Tenant SJ collapsed as a result of the natural gas leak.

The Tenants submitted that, as a result of their frustrations, they provided the Landlord with a written letter, dated January 23, 2020, to express their requirements for a safe rental unit, that the gas leak needed to be fixed and that the heating was inadequate.

The Tenants stated that BC Hydro attended their unit to inspect the fireplace on January 25, 2020 and found a leak. As a result, the gas was turned off and the stove was inoperable.

The Tenants testified that they spent \$200.00 for two electric heaters for the living room on January 26, 2020. The Tenants stated they do not have the receipts for the heaters.

The Tenants testified that they left the rental unit on January 28, 2020 because of the gas leak and it was too cold. The Tenants said they spent \$700.00 in hotel bills as they could not find any rental vacancies. In their written submissions, the Tenants stated they moved into a hotel on January 20, 2020. The Tenants stated they do not have any receipts for the hotel stay.

The Tenants submitted a BC Hydro bill, dated January 7, 2020, for \$288.24. The Tenants claimed that their January 2020 hydro bill was significantly higher because of the electric heaters that they were forced to buy and heat the rental unit.

The Tenants submitted that there was sewage gas leaking into the rental unit and that they had to plug holes with rags in an attempt to limit the smell.

The Tenants are seeking to be compensated for the following:

1. Their hotel stay in the amount of \$700.00.
2. The cost of the increased heating; BC Hydro bill in the amount of \$288.24.
3. The purchase of electric heaters in the amount of \$200.00.
4. A return of their first months’ rent in the amount of \$1000.00.

The Landlord testified that the Tenants provided the manager with \$1000.00 cash at the time of signing the Tenancy Agreement. The Landlord stated that the utilities such as hydro and gas services are not provided by the Landlord and were not included in the monthly rent.

The Landlord testified that the Tenancy Agreement established a security deposit in the amount of \$500.00 was due by December 9, 2019. He stated that there is no record of a security deposit from the Tenants at any time during their tenancy.

The Landlord testified that the Tenants paid their January 2020 rent and that he has the deposit records for this rent.

The Landlord stated that the manager received a letter from the Tenants and on January 20, 2020, the manager read the letter with a list of concerns, including a claim of a natural gas leak, to the Landlord over the phone. The Landlord said that they decided to have a natural gas technician investigate for leaks and assess for safety as soon as possible.

The Landlord stated that a qualified gas technician attended to the rental unit on January 21, 2020 and that the Tenants took pictures of the gas fitter while he was assessing the fireplace and gas lines. The Landlord stated that he received an invoice from the technician which stated that during the inspection no leaks were found from the fireplace or the gas line supply. The invoice also noted that the fireplace was to remain "tagged out" or shut off until a complete service of the unit was completed.

The Landlord testified that a second letter was received from the Tenants on January 23, 2020 that stated further concerns about the rental unit.

The Landlord stated that there were electric baseboards in the bedrooms and bathroom of the rental unit and acknowledged that once the fireplace was turned off, that the living room would require some space heaters or baseboards. When the Landlord spoke to his manager, the Landlord said that he would purchase space heaters for the rental unit, but the manager said that the Tenants had already done so.

The Landlord testified that, on January 28, 2020, two baseboard heaters were installed in the living room and kitchen area within the rental unit.

The Landlord stated that the Tenants provided a letter to the manager on January 28, 2020 that stated they were going to move out of the rental unit by January 31, 2020. The Landlord stated the Tenants abandoned the rental unit with two days notice and that he lost the rent for February 2020.

The Landlord testified that the BC Hydro invoice that the Tenants submitted was dated January 7, 2020 and would have included the period from the beginning of the tenancy until January 7, 2020 and would not have included the week after the fireplace was shut-off.

The Landlord submitted that the Tenants chose to move out of the rental unit without proper notice. The Landlord stated that he responded quickly to the Tenants concerns, providing a technician to check into the gas leak report and then installing baseboard heaters once the fireplace was found inoperable. The Landlord said that he should not be responsible for the Tenants' hotel bill as he was providing a habitable rental unit and suffered the loss of rent for February 2020.

The Landlord responded to the claim of sewer gas in the rental unit by testifying that there was a sewer leak in 2017 that was completely rectified by an insurance claim and comprehensive restoration. He stated that his manager nor the gas technician experienced or smelled any sewer gas while in the rental unit.

Analysis

Section 7(1) of the Act establishes that a party who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the other party for damage or loss that results from that failure to comply.

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 the responsible 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 Applicant must prove the existence of the damage/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 that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 38 of the Act speaks to the return of the security deposit by the landlord to the tenant. In this case the Tenants requested a return of their security deposit and the Landlord testified that the Tenants failed to pay the security deposit. The Tenants acknowledged that they did not submit any evidence to support their testimony that they actually paid a security deposit to the Landlord. Based on this, I find the Tenants failed to provide sufficient evidence that they paid a security deposit. As such, I dismiss the Tenants' request for the return of the security deposit.

The Tenants are seeking to be compensated for the following:

1. Their hotel stay in the amount of \$700.00.
2. The cost of the increased heating; BC Hydro bill in the amount of \$288.24.
3. The purchase of electric heaters in the amount of \$200.00.
4. A return of their first months' rent in the amount of \$1000.00.

The Tenants testified that they were forced to move out of the rental unit and into a hotel on January 28, 2020 because there was a natural gas leak and it was too cold in the rental unit. When I consider whether the Tenants should be awarded compensation for their subsequent hotel bill, I refer to the following:

- During the hearing, the Tenants acknowledged that the Landlord had provided working baseboard heaters in the bathroom and bedrooms of the rental unit during the tenancy.
- The Tenants testified that they bought \$200.00 worth of space heaters to heat the living room after the fireplace was disconnected.
- The Tenants acknowledged that the natural gas was turned off by a technician during the inspection of the gas stove.
- The Landlord provided undisputed testimony that on January 28, 2020, two baseboard heaters were installed in the living room area of the rental, as a result of the Tenants' written complaint.

Based on the above, I find that the Tenants failed to provide sufficient evidence that they had to move out of the rental unit because of a gas leak or insufficient heat as, according to the Tenants, the gas had been turned off and the issue of heat was remedied by buying space heaters. Part of a successful claim pursuant to section 67 of the Act includes the presentation of evidence that can verify the actual monetary amount of the loss. In this case, the Tenants did not provide any receipts or dates for their hotel stay. As a result, I dismiss the Tenants' claim for compensation for the hotel bill.

The Tenants provided a BC Hydro bill as evidence to show that their hydro electricity usage was higher based on the need to buy and run two space heaters. When I consider whether the Landlord should compensate the Tenants for the amount of the BC Hydro bill, I reference the following:

- The Tenants' testimony that they bought the space heaters after the fireplace was disconnected. There was conflicting testimony on the date of the technician's visit where the Landlord stated it was on the earlier date of January 21, 2020, and the Tenants stated it was on January 25, 2020.
- The Tenants' acknowledgement that the BC Hydro bill, dated January 7, 2020, that they submitted would likely not represent the period of time they were using the space heaters.
- The Tenants testimony that the fireplace provided heat up until it was disconnected.

Based on the Tenant's testimony, I find that the Tenants would have had to use the space heaters between January 25 and January 28, 2020, when they moved out of the rental unit. If the fireplace was disconnected on January 21, 2020, the Tenants would have had to use the space heaters for eight days. As a result, I find that the Tenants

failed to provide sufficient evidence that the BC Hydro bill of \$288.24 represented the period that they were using the space heaters or that it demonstrated an accurate estimate of their loss. As a result, I dismiss this part of the Tenants' claim.

The Tenants requested \$200.00 in compensation for the space heaters that they had to buy as a result of a lack of heat due to the disconnection of the fireplace. When I consider if the Landlord should compensate the Tenants for this loss, I reference the following:

- The Landlord's acknowledgement that the fireplace was disconnected on January 21, 2020 and that there was one week where the Tenants did have to supply their own heat source for their living room.
- The Tenants' testimony that they did not have any receipts for the space heaters and cannot verify the actual monetary amount of the loss.

I find that the Tenants did have to supply their own heat source as a result of the Landlord failing to provide adequate heat between the dates of January 21 and January 28, 2020. However, I find that the Tenants failed to provide an accurate estimate for the cost of the space heaters as no invoices were submitted. As a result, I dismiss this part of the Tenants' claim.

The Tenants requested a return of their first months' rent in the amount of \$1000.00 and based this on their claim that the rental unit didn't have adequate heating; the Tenants had to endure "significant extra expenses" related to the space heaters and hydro bill; there was sewage gas leaking into the rental unit; and, that there was a gas leak that caused one of the tenants to collapse.

I have dismissed the Tenants' claim for the costs of increased heating, purchase of heaters and the cost for their hotel stay and find that the Tenants failed to provide sufficient evidence that they suffered a loss of one month's rent, in the amount of \$1000.00. There has been no evidence provided to me that the Tenants were unable to live, sleep, cook or use the facilities of the rental unit during their tenancy. As such, I dismiss the Tenants' claim for \$1000.00 in compensation.

In summary, I dismiss both the Tenants' claim for the return of their security deposit and their monetary claim without leave to reapply. As the Tenants' Application was unsuccessful, I do not award compensation for the filing fee.

Before concluding this Decision, I have to acknowledge the Tenants' challenges during their tenancy and accept their undisputed testimony that they had little choice but to heat their living room with an old gas fireplace and subsequently, after the fireplace was disconnected, had to adapt by buying space heaters for the few days/1 week in January

2020, before the Landlord installed baseboards. As such, I award the Tenants nominal damages in the amount of \$250.00, pursuant to section 62 of the Act and in accordance with *Residential Tenancy Policy Guideline #16 – Compensation for Damage or Loss*.

Conclusion

I dismiss the Tenants' Application for dispute resolution without leave to reapply.

I grant the Tenants a Monetary Order for \$250.00 in nominal damages, in accordance with section 62 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: November 19, 2020

Residential Tenancy Branch