Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, MNDCT, RP, RR, FFT

Introduction

This hearing was convened as a result of the Tenant's Applications for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for:

- more time to apply to cancel the Two Month Notice of End of Tenancy for Landlord's Use, dated July 29, 2021;
- an unspecified amount of a monetary order for compensation under the Act;
- an order for repairs to the unit, or property, having contacted the landlord in writing to make repairs, but they have not been completed;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided; and
- to recover the $100.00 cost of their Application filing fee.

However, as the Tenant had vacated the rental unit by the date of the hearing, the Tenant's counsel, M.S. ("Counsel"), said that he only seeks a monetary order for damage or compensation under the Act, to reduce the rent for repairs, services or facilities agreed upon, but not provided, and to recover the $100.00 cost of his Application filing fee.

The Tenant, Counsel, and the Landlord, B.C., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party and to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute

Resolution or the documentary evidence. The Landlord said they had received the Application and the documentary evidence from the Tenant and had reviewed it prior to the hearing. The Landlord confirmed that they had not submitted any documentary evidence to the RTB or to the Tenant.

Preliminary and Procedural Matters

The Parties provided their email addresses in the hearing and they confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing, and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to a Rent Reduction, and if so, in what amount?
- Is the Tenant entitled to Recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on May 1, 2020, with a monthly rent of $1,850.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $1,000.00, and no pet damage deposit. They agreed that the Tenant vacated the rental unit on September 26, 2021, and that the Landlord returned the Tenant's security deposit in full.

#1 COMPENSATION UNDER THE ACT RE AIR CONDITIONING → $

I asked the Tenant to explain his monetary claim, and Counsel said the following:

> Technically, this was a heat pump, which failed during a heat wave. The evidence will show that the Landlord during ownership had never serviced the heat pump, and failed to repair it in a reason time. The Tenant purchased a second-hand air conditioner, and he hasn't been compensated for this, and the mitigating air conditioner was ultimately insufficient. The Tenant was diagnosed

> with sick building syndrome, as a result of living in the hot unit. He lived there until the eviction, with no or insufficient air conditioning.

Counsel confirmed that the Tenant kept the air conditioner he had purchased.

The Landlord responded, as follows:

> My only real comment is that we tried to get the air conditioner fixed as expediently as we could. With the Covid, the availability of parts took much longer than anticipated – there were no parts available. The heat pump is 10 years old. It was the compressor, a component of the heat pump that was needed. So that's why it took so long. There were no parts available.
>
> Also, I'd like to comment that there was a significant heat wave and the availability of refrigeration mechanics - those guys were tasked to their limits. As far as being able to get it fixed, it wasn't the only unit in [the City] that was done; it was everyone.

I asked the Landlord how many repair shops he called, and he said: "We had a guy come in to diagnose the problem, and then they ordered the part. They were the first ones able to come. Once the part is ordered I can't go shopping around.

Counsel said:

> My instructions are that my Client feels there was ample opportunity to have someone in faster. He is in a better position to comment on that. Going to the Act – a tenant's right to quiet enjoyment of the rental unit - namely section 28 (a), the Tenant may be entitled to compensation for loss even when the Landlord made reasonable efforts, pursuant to RTB Policy Guideline 6. The relevant paragraph:
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> Page 6-2
>
> > A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.
>
> To circle back, it's also the Landlord's duty to maintain the property in a state of repair that complies with health, safety, and housing standards required by law,

> per section 32 (1) (b) of the Act. I submit there is no evidence of it, and the Landlord is in a position to agree that during the time he owned the property that this heat pump has not been serviced.

The Landlord confirmed that the heat pump has not been serviced since he has owned the property. He said:

> The compressor is a component in the heat pump, and when you set it for 16 degrees when it's 40 degrees outside, you strain it. You can only be running at 10 degrees below outside temperature; it's not designed to lower the temperature 30 degrees.

I asked the Landlord how he knew this and if he had any documentary evidence to support it. He said that any technician that he has ever spoken to has said this.

The Landlord added:

> The only other thing is that the portable air conditioner that he did buy - we offered to pay for it. My wife emailed him, and I don't have a date for that, but we offered.

Counsel said:

> I have that text. There was an offer, although it seems as though it was contingent. There seems to have been some back and forth, although after a certain date the texts stopped being returned. Also, part of the contingent offer was an offer for a reduction of rent.

Counsel said that the texts were sent on September 1, 2021.

I asked Counsel how the Tenant responded to this offer. He said:

> At the time the offer was made, it was contingent on his vacating the premises. There was no monetary value – the offer was something like an offer to pay for the air conditioner, plus something for your trouble.

Counsel referred me to the Tenant's evidence in which the Landlord said the following in a text dated September 1, 2021:

> …We can compensate you some plus buy your air conditioner from you. As long as you move out at the end of the month or we are going to be homeless and broke.

Counsel referred me to the Tenant's reply, as follows:

> [Landlords]
>
> The dispute is not about 'moving out'. It is about how I was left with less than undesirable living conditions during [a] heat wave. I was left with no other option than to bring this matter to the Residential Tenancy Board. It saddens me it had to come to this. I am also a reasonable man with compassion and empathy… none of which I received from my landlords over the last few months. I endured lack of sleep, anxiety, and depression which my doctor diagnosed as SBS (explained in his note). Should you feel the need to end this dispute without the need for legalities, I am open to negotiation between us. The ball is in your court. In accordance with the tenancy act it is imperative, from here on in, we all agree to correspond strictly via email. Will need your written consent that you agree to this.
>
> Regards,
> [Tenant]

The Landlord said: "We tried our best to get the air conditioning working. There's not much more to talk about."

The Tenant submitted photographs of temperature readings for the city in July 2021. This showed the high temperatures for the first week to range from 29 to 36, the second week it was 32 to 36 degrees Celsius. In the last week of that month, the temperatures for Sunday through Saturday were: 42, 42, 44, 44, 39, 34, and 36 degrees Celsius.

The Tenant submitted a letter from his physician dated August 20, 2021, stating the following:

> To Whom It May Concern 20 August 2021
>
> Re: [Tenant]
> [DOB, Phone,
> Address]

> The above patient suffers from Anxiety and Depression. Also developed symptoms and signs of SBS (Sick Building Syndrome), probably due to lack of efficient air conditioning through the hot and smoke filled valley.
>
> It is important that [the Tenant] should not be in situations that can cause more stress, anxiety and depression.
>
> Kind Regards,
> [signature]
>
> Dr. [G.V.]

#2 REDUCE RENT - SERVICES AGREED ON, BUT NOT PROVIDED → $

I asked Counsel what amount the Tenant seeks for this claim. Counsel said:

> He's leaving this in the hands of the Tribunal. This would be an exceptional claim, as unlike a normal summer, there was quite a bit of suffering attached with this that my client is prepared to give evidence about. We would be looking for a quarter to a fifty percent reduction in rent. A quarter being what I've seen prior tribunals issue, but this was a prolonged period with quite a bit of heat, and my Client endured quite a bit of suffering and loss of enjoyment.

The Landlord said:

> There was no opportunity for negotiation. We received an email from the Tenant that we were no longer able to speak besides through email. So, of course his texts were not responded to.

Counsel asked the Tenant questions, which reviewed the excessively warm temperatures during the summer in question. The Tenant confirmed that that it was at least 34 degrees Celsius for most of July and August 2021. The Tenant also noted that he could not open his window for any breezes, because there was so much smoke from the forest fires burning nearby.

Counsel asked about the Tenant's health during this timeframe, and the Tenant said:

> It started with depression, loss of sleep. I work outside for a living, so I'm putting up with that heat, and coming home to that made me sick, irritable. I drive a truck

> for a living, and I was not getting proper sleep. Some days I shouldn't have been driving, but I had to. I was taking sleeping pills, I had to go to my doctor; it was not good.

The Landlord said:

> I know that the doctor is going to write him a note saying whatever he tells him. It could have been anything – everybody was dealing with heat and smoke; he wasn't the only one. I work outside, as well. But we all have to find a way to get through.

Counsel made his last statements, as follows:

> The only thing I would comment on is, again, the Landlord's submissions seem to imply that he didn't do it intentionally. It's not an argument that it was intentional. But the Landlord is running a business, and when it comes down to the Tenant – he did fulfill all of his obligations and he is entitled to quiet enjoyment of the residential property. It's the Landlord's responsibility to rectify disturbances in a reasonable amount of time. Regardless of the Landlord's intent, it did cause a significant amount of distress to my client. Evidence shows that. There was a serious and a significant degree of deprivation of quiet enjoyment, due to a failure to repair the air conditioning within a reasonable amount of time.

In his closing remarks, the Landlord said:

> I'd like to reiterate that we had a service tech as soon as we could get one. A part was ordered once the problem was established. I have no control over how long it takes to get parts. We had someone come over, authorized them to order parts, and it took longer than anticipated. Certainly, I have no control over the temperature or the amount of smoke in the valley. It gets hot and there are fires in this valley.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before they testified, I let the Parties know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of

proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Tenant must prove:

1. That the Landlord violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Tenant did what was reasonable to minimize the damage or loss.

("Test")

#1 COMPENSATION UNDER THE ACT RE AIR CONDITIONING → $

The Tenant's argument is that the Landlords violated the Act, regulation, or tenancy agreement by not providing a comfortable temperature in the residential property during a heat wave in the summer of 2021. The Tenant said that this caused him to lose sleep, and it worsened his mental health and his health overall.

The Landlords asserted that they tried to have the compressor in the heat pump repaired for this purpose as soon as possible; however, they were unable to have it repaired until after the Tenant had vacated the rental unit – after the heat wave ended.

Section 32 of the Act requires a landlord to maintain the rental unit in a state of 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, which make it suitable for occupation by the tenant.

The Landlord said that once the part was ordered for the heat pump compressor, he was not in a position to seek it somewhere else. However, I find that it was the Landlords' duty in this set of circumstances to do everything they could to repair the heating/cooling system of the residential property for the Tenant(s). I find that the Landlords could have done more to try to find a part to repair the compressor in the heat pump by calling other repair outlets.

However, I appreciate that the pandemic complicated the situation for the Landlords, and I find that it is common knowledge that trades were reluctant to enter someone's residence to conduct repairs during Covid lockdowns in 2020 and 2021. As such, I find that the pandemic introduced larger impediments to the Landlords' efforts in this regard than normally would have been the case.

I find that the Tenant has met the first two steps of the Test, as I find that the Landlords failed to fully meet their requirements under section 32 of the Act to maintain the rental unit in a state of repair that complies with health, safety, and housing standards.

However, the Tenant did not even propose an amount that he seeks from the Landlords in this matter, let alone explain how he calculated this amount. Accordingly, I find that the Tenant failed the third step of the Test in not submitting a rationalized value for the compensation sought in this matter.

The evidence before me is that the Landlords were required to assist the Tenant with maintaining the temperature to a healthy level, but they failed to do this; as such, in this set of circumstances, I award the Tenant a nominal amount of **$500.00** from the Landlords pursuant to Policy Guideline #16 ("PG #16") and section 67 of the Act.

PG #16 states:

> An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:
>
> - "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

#2 REDUCE RENT - SERVICES AGREED ON, BUT NOT PROVIDED → $

Based on the evidence before me overall in this matter, I find that the Tenant has not differentiated this claim from the last. His evidence and arguments are the same, and further, he has not pled or provided any evidence of the value of this claim. It is not the Tribunal's job to establish a value for a party; that is part of an applicant's obligations in these proceedings.

I have already granted the Tenant a nominal award, despite his having failed to provide a value for either of his claims. I find it would be inappropriate to determine a value for this claim separate from the first claim. As such, I dismiss this claim without leave to reapply.

Given his marginal success in these applications, I decline to award the Tenant with recovery of the $100.00 Application filing fees.

The Tenant is awarded nominal damages of $500.00 from the Landlords as compensation for the Landlords' failure to regulate the temperature in the residential property during a heat wave. I grant the Tenant is a **Monetary Order** of **$500.00** from the Landlords pursuant to section 67 of the Act.

Conclusion

The Tenant is marginally successful in his claims for compensation from the Landlords in the form of a nominal award of $500.00. However, the Tenant failed to plead or provide evidence to support a value for his claims. As such, his second claim was dismissed without leave to reapply.

I grant the Tenant a **Monetary Order** from the Landlords of **$500.00**. This Order must be served on the Landlords by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: December 15, 2021

Residential Tenancy Branch