



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, PSF, RR, RP, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The tenants and the landlord attended the hearing, and one of the tenants and the landlord gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

No evidence, other than proof of service has been provided by either party.

At the commencement of the hearing, the landlord agreed that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled, and I so order.

Also, during the course of the hearing, the tenant advised that the shower has been repaired and the tenant withdraws the application for an order that the landlord provide services or facilities required by the tenancy agreement or the law, and I dismiss that portion of the tenants' application.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for compensation related to a leaky shower into a rental unit below and firewood?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided, and more specifically loss of use of the shower stall?
- Have the tenants established that the landlord should be ordered to make repairs to the rental unit, being further repairs to the furnace, and adjust the utility bills?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to make promised repairs?

Background and Evidence

TENANT'S TESTIMONY:

The tenant testified that this tenancy began on June 8, 2021 and the tenants still reside in the rental unit. Rent in the amount of \$3,000.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is the upper floor of a house, and someone lives in the basement. The landlord does not live on the property, however other areas of the property are rented, some for storage, and some is the landlord's area.

The tenant further testified that since the beginning of October, 2021 the landlord was aware that the thermostats were not working, and on or about October 16, 2021 it started to be repaired, but not completed. The landlord wants the tenants to pay 60% of utilities, but the rental unit is only 30% of the property. The tenant obtained some firewood due to lack of heat for over 2 weeks due to no working furnace, and the tenants claim \$250.00 for firewood.

The tenants also claim \$500.00 for the landlord's failure to repair a shower stall, which was promised in July and not completed before November 1, 2021. There are 3 people

living in the rental unit, and the tenant that was in the basement suite moved out at the end of September due to lack of heat, unsafe wiring and the shower leaking onto their toilet from upstairs. The new tenant in the basement didn't get heat until November 1. The tenants' claim is a rent reduction of \$100.00 per month for the landlord's failure to make repairs to the shower stall, which prevented showering in that bathroom so as to not disturb the basement suite tenant.

The tenant also testified that the furnace is not working correctly. There are open exhaust holes which heat the great outdoors. The tenants rent 30% of the house, and that's all they want to pay because the gas bills are very large. The indoor pool area is the landlord's area. The livable portion of the upstairs and downstairs suites is 50% of the house, but shops, garages and other areas are also rented out. The only problem that the tenants have now with the furnace is the amount of utilities the tenants are supposed to pay.

The tenant also testified that the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which was dated 10/10/21 for unpaid rent in the amount of \$3,000.00 that was due on 02/10/2021 and \$183.00 for an unpaid gas bill following a written demand on 06-10-21, but the tenants didn't get a written demand. Rent was paid on October 13, 2021. The hydro bill is in the tenant's name and has never received any money from other tenants or the landlord, so the gas bill should be deducted from the amount the tenant paid for hydro.

LANDLORD'S TESTIMONY:

The landlord testified that the area that natural gas is used is primarily in the upper unit. There is no heat in the shop and plumbers say that if the windows are closed, it's dangerous.

Only 1 thermostat wasn't working and was for the kitchen and dining room but another in the hallway was working it looks after rest of the rental unit. The tenant called the landlord, who went to the rental unit and saw firewood. The landlord called a plumber and he fixed it in October, 2021. The thermostat in the kitchen and dining room was only not working for 2 weeks.

The landlord further testified that the tenants didn't need that much firewood, and no one paid the gas bill of \$105.11 in July. The tenants paid \$50.00 toward a gas bill of \$167.79 in

August, 2021. The September gas bill was \$183.42, which also was not paid, and the landlord paid \$100.00.

Upper portion and most of heat and hydro are in the upper level of the home. The basement has 2 bedrooms and a small kitchen and that unit is about ¼ of the size of living space, or abit bigger. There is a big storage shed attached to the house, rented by a separate tenant who pays no utilities. There is no heat in there; it's just used for storage. The indoor pool is closed and has no heat.

The landlord also testified that the tenancy agreement says included are garbage, laundry, kitchen appliances, window coverings and washer, but not a dryer, or water, or heat, or internet.

The landlord does not believe that the tenants should be compensated for the shower repair because it was not leaking in their rental unit. The landlord also disputes that a previous tenant in the lower level moved out as a result of the leaky shower.

Analysis

In order to be successful in a claim for damage or loss, including reducing rent for repairs, services of facilities agreed upon but not provided, the onus is on the tenants to establish that the tenants suffered a loss, that the loss was suffered as a result of the landlord's failure to comply with the *Residential Tenancy Act* or the tenancy agreement, the amount of the loss, and what efforts the tenants made to mitigate the damage or loss suffered.

In this case, neither party has provided any evidence to substantiate their positions with respect to the monetary claims made by the tenants, and I can only rely on the affirmed testimony of the tenant and the landlord.

With respect to the tenants' claim for firewood, the tenant testified that thermostats were not working for over 2 weeks in October, 2021 and the tenants bought some firewood. The landlord disputes that the tenants needed as much firewood as they obtained, and there are no receipts provided to substantiate the amount. Therefore, I find that the tenants have failed to establish any amount of a loss.

The tenants also apply to reduce rent by \$100.00 per month for 5 months for the leaky shower. The tenant testified that there are 3 people living in the rental unit and avoided using the shower to prevent disturbing the basement suite tenant, and that the basement suite tenant moved out as a result of the leak from the upper unit and other

issues. However that was disputed by the landlord. I accept the undisputed testimony of the tenant that the landlord knew of the required repair in July and it wasn't repaired until November 1, 2021. The *Residential Tenancy Act* does not permit monetary claims to a tenant to punish a landlord, but does permit me to grant nominal damages. I find that the landlord failed to make the repair in a timely manner which inconvenienced the tenants by limiting use of the shower, and I award nominal damages to the tenants in the amount of \$100.00.

The tenant also testified that the utility bills are very large, and the tenants should only pay 30% of the bills because they only rent 30% of the home and property. That is disputed by the landlord, who testified that the gas bills are mostly for the upper rental unit, and there is no heat in the shop. The landlord testified that the tenancy agreement, a copy of which has not been provided for this hearing, specifies that water, heat and internet are not included, and that the big storage shed attached to the house is only used by another tenant for storage and there is no heat in there, or in the pool area. The tenant also testified that the hydro bill is in the tenant's name and has never received any money toward that from other tenants or the landlord, and the gas bill should be deducted from the hydro bills paid by the tenant. No one has provided copies of any bills. I am not satisfied that the tenants have established that the rental unit is 30% of the property or what portion of the utility bills are for the rental unit or more than the rental unit, or by how much.

The landlord did not dispute the tenant's testimony that repair to the furnace is not completed, but the tenant also testified that the only problem with the furnace now is the amount the tenant is required to pay for heat. I am not satisfied that the tenants have established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, or that further repairs are currently required, and I dismiss the tenants' application for an order for repairs, and for an order that the landlord comply with the *Act* or the tenancy agreement.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenants as against the landlord in the amount of \$200.00 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, and by consent, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 10, 2021 is hereby cancelled.

The tenants' application for an order that the landlord provide services or facilities required by the tenancy agreement or the law is hereby dismissed, as withdrawn by the tenants.

The tenants' application for an order that the landlord make repairs to the rental unit or property is hereby dismissed.

The tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$200.00, and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: February 26, 2022

Residential Tenancy Branch