



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacific Cove Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OLC, MNDCT, RR**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and reduction of rent as claimed?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in December, 2020. The monthly rent is \$862.00 payable on the first of each month. A security deposit of \$425.00 and pet damage deposit of \$425.00 were paid at the start of the tenancy and are held by the landlord. The rental unit is a first-floor suite, located above the parking area, in a multi-unit building.

The parties agree that due to weather conditions there was a week during December, 2021 when the building had issues providing heat to the suite. The landlord's agents gave evidence that they made repairs to the building, provided space heaters to affected units and rectified the situation with a reasonable timeframe.

The tenant submits that due to the age and character of the building, the measures taken by the landlord are insufficient. The tenant suggests that simply replacing insulation below the suite, in the parking area is inadequate and that the issue will inevitably recur unless more fundamental repairs and upgrades are performed on the building. They say that the rental unit is consistently losing heat and their electrical bills are far higher than comparable units elsewhere in the building. The tenant submits their own utility bills and those of others in support of their application. The tenant seeks a retroactive rent reduction of \$50.00 and a monetary award of \$500.00.

Analysis

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 that 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 claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This section, read in conjunction with section

65, allows me to make a retroactive rent reduction for the loss in the value of the tenancy.

Pursuant to Residential Tenancy Rule of Procedure 6.6 the onus to establish their claim on a balance of probabilities lies with the applicant.

In the present circumstance, based on the undisputed testimony of the parties, I accept that there was a period of approximately one week in December 2021 when the heating system for the building was not functioning. I accept the landlord's evidence that they provided space heaters and performed repairs in a timely manner given the seriousness of the issue. Nevertheless, I find that despite the landlord's best efforts there was an impact on the value of the tenancy as the tenant was without adequate heating within the rental unit during a particularly cold period of the year.

Based on the foregoing I find that a retroactive rent reduction of \$172.40, approximately 20% of the monthly rent for this tenancy to be appropriate. This award contemplates that the tenant was able to continue to reside in the rental unit but due to the absence of working heating systems their tenancy was detrimentally affected.

I find insufficient evidence for the balance of the tenant's claim. I find the tenant's submission that they are paying higher utilities due to deficiencies in the rental unit to have little evidentiary support. As the landlord's agent stated, there are multiple reasonable explanations for different energy consumption by different individuals in different suites.

I find the tenant's submission consist primarily of conjecture, subjective observations and suppositions. The tenant submits that the work conducted by the landlord is inadequate and insufficient but I find this position to be supported by no third party professional or documentary materials. I find the tenant's complaints to be insufficient to meet their evidentiary burden to establish there has been any breach on the part of the landlord that would give rise to a monetary award or an order for compliance. Accordingly, I dismiss this portion of the application.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$172.40. As this tenancy is continuing I allow the tenant to satisfy this award by making a one-time deduction of \$172.40 from their next scheduled rent payment.

The balance of the application is dismissed without leave to reapply.

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: May 3, 2022

Residential Tenancy Branch