



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$3,103.33 for damage or compensation under the Act; and to recover the \$100.00 cost of her Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlords. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about it. During the hearing the Tenant was given the opportunity to provide her evidence orally and to respond 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.

As the Landlords did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served each of the Landlords with the Notice of Hearing documents by Canada Post registered mailings, sent on December 3, 2021. The Tenant provided Canada Post tracking numbers as evidence of service. I find that the Landlords were deemed served with the Notice of Hearing documents in accordance with the Act.

The Tenant said that since the Landlords did not pick up the registered mail with the Notice of Hearing documents, she did not think they would pick up her evidence if she

sent it to them; therefore, the Tenant confirmed that she had not served the Landlords with her evidentiary submissions.

The Rules require applicants to serve the other party with their evidentiary submissions, so that the other party will know about the applicant's case. I find that by not having given the Landlords an opportunity to receive the Tenant's evidentiary submissions, the Tenant breached Rules 3.1 and 3.14 and section 59 of the Act. These Rules require Applicants to serve the Respondents with evidentiary submissions "...not less than 14 days before the hearing". I, therefore, admitted the Application, but not the Tenant's evidentiary documents; however, I continued to hear from the Tenant in the absence of the Landlords, as her testimony was evidence before me for consideration.

I note that the Landlords had submitted evidence to the RTB; however, it was received four days prior to the hearing, in breach of Rule 3.15, which requires a respondent to submit evidence to the RTB and the Applicant within at least 7 days of the hearing. The Landlords' evidence was not submitted in compliance with the Rules. Further, the Landlords did not attend the hearing to present the merits of their position. Accordingly, I have not considered the Landlords' documentary submissions.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and she confirmed them in the hearing. She also confirmed her 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 Tenant that she is 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 Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Tenant confirmed that the fixed term tenancy began on November 1, 2018, and ran to October 31, 2019, and then operated on a periodic basis. She confirmed that she pays the Landlords a monthly rent of \$2,801.30, due on the first day of each month. The

Tenant said that she paid the Landlords a security deposit of \$1,345.00, and no pet damage deposit. The Tenant said that the Landlords still hold the security deposit in full.

In the hearing, the Tenant said that on October 20, 2021, the hot water tank in the residential property stopped working. She said it needed to be replaced. The Tenant said she messaged the Landlords on the 21st, and on the 22nd of October, and that the Landlord responded, saying the plumber was not available until a week later.

The Tenant said that the Landlord told her that the plumber was coming on October 27th, but the Landlord did not know when in the day the plumber was coming. The Tenant said that the plumber or the Landlord cancelled the appointment.

The Tenant said that on November 9, the Landlord came with a plumber, and two realtors, although, they never listed the house for sale.

The Tenant said that the hot water tank was replaced on November 22, 2021, after the Tenant had been without hot water for over four weeks.

I asked the Tenant to explain her claim to me. She said that she broke down the daily cost of rent for 33 days and then added the \$100.00 Application filing fee. She said:

I could have had a plumber there the next day. Any time I say anything to her, she said she was going to live in the house . . . The tank went in on November 22nd, and the hot water stopped on October 19th. I called her on the 20th. I couldn't ignite the flame.

I asked the Tenant how she calculated her claim, and how important hot water was to the tenancy. She said:

We need it for showers, laundry, dishes, so many things. I do construction, so I need a shower every day after work. I have a teenage son who showers a lot. I wouldn't even know how to put it as a percentage.

The Tenant described the residential property as having "...four bedrooms, two living rooms, three bathrooms, a garage, bedrooms, and the bathrooms that have showers are upstairs. Two storeys."

The rent is \$2,801.30 divided by an average of 30.78 days per month, \$91.01 per day. The Tenant calculated that her family was without hot water for 33 days, which equates to \$3,003.33 or \$91.01 per day.

Analysis

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

The Tenant's claim is that she should be reimbursed for all of the rent she paid while being without hot water.

Section 1 of the Act includes a definition of "service or facility", which "includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit. "appliances" are included within this definition. I find that the hot water tank is an appliance in a residential property, and therefore, fits under the definition of "service or facility" in the Act.

Section 27 of the Act sets out a landlord's obligations regarding the termination and restriction of services or facilities. It requires that a landlord must not terminate or restrict a service or facility, if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

Policy Guideline #22, states:

An 'essential' service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation . . . , the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

I find that the Tenant has explained the importance of hot water to her tenancy, noting that she needs to shower every day after doing construction work in the day. Her son is a teenager, and I find it is consistent with common sense and ordinary human experience that a teenager needs to shower regularly. The lack of hot water also affected the Tenants' ability to do dishes, and clean generally around the house.

However, the Tenants were able to use the residential property for shelter and other

purposes. I find that they were able to get some benefit from the residential property during the month that they were without hot water. As such, I find that the lack of hot water affected 60% of the usage of the residential property, as the ability to stay clean comfortably, to wash one's clothes and dishes, and to clean one's home greatly affected the Tenants' use of the residential property. I find from the testimony that the absence of this service greatly affected the Tenants' lives, although they were still able to live there. As such, I award the Tenant with 60% of what she seeks of $\$3,003.33 \times 0.60 =$ **\$1,802.00** from the Landlord, pursuant to sections 27 and 62 of the Act.

Given her success in this matter, the Tenant is also awarded recovery of the **\$100.00** Application filing fee from the Landlord pursuant to section 72 of the Act. The Tenant is, therefore, awarded a total of **\$1,902.00** from the Landlord, pursuant to section 67 of the Act.

Pursuant to section 62 of the Act, the Tenant is **authorized to reduce one upcoming rent payment** by the amount awarded, in complete satisfaction of these awards.

Conclusion

The Tenant is largely successful in her claim for compensation from the Landlord, as the Tenant provided sufficient evidence to meet her burden of proof on a balance of probabilities for 60% of her claim. In addition to a monetary award of **\$1,802.00** for compensation due to a withdrawal of a service or facility in the residential property, the Tenant is also awarded recovery of her **\$100.00** Application filing fee.

The Tenant is **authorized to reduce her future rent payment** by an amount equal to **\$1,902.00** in complete satisfaction of the awards.

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 26, 2022

Residential Tenancy Branch