



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, FFT

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- A monetary order pursuant to s. 67 to be paid back rent for the cost of repairs made during the tenancy; and
- Return of their filing fee pursuant to s. 72.

A.O. appeared as the Tenant. The Landlords did not attend, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Landlords did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure. The hearing concluded after 11 minutes without participation from the Landlords.

The Tenant affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Tenant confirmed that he was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that he personally served the Landlords with the Notice of Dispute Resolution and evidence on December 31, 2021. Based on the Tenant’s affirmed testimony, I find that the Landlords were served with the Notice of Dispute Resolution and evidence in accordance with s. 89 of the *Act*.

Issues to be Decided

- 1) Are the Tenants entitled to compensation from the Landlords due to payment of repairs?
- 2) Are the Tenants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Tenant confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on July 1, 2021.
- The tenancy was for a fixed 6-month term ending on December 31, 2021.
- The Tenants surrendered the keys for the rental unit to the Landlords on December 31, 2021.
- Rent of \$3,000.00 was due on the first day of each month.
- The Tenants paid a security deposit of \$1,500.00 and a pet damage deposit of \$1,500.00 to the Landlords.

A copy of the tenancy agreement was put into evidence by the Tenants.

The Tenant advised that there was a leak in the hot water tank in the basement on September 7, 2021. The Tenant further testified that they shut off water to the tank and cleaned the water that had pooled on the floor.

The Tenant provides a copy of a text message sent to the Landlord Y.Y. on September 7, 2021, which advised of the leak from the hot water tank. The text message exchange provided by the Tenant shows that the Landlord responded on the same day as follows:

Thanks for let (sic) me know. Can you find someone to work on it? I'll cover the cost.

The Tenant advised that he obtained a plumber to replace the hot water tank on September 10, 2021. A copy of an invoice dated September 10, 2021 was put into evidence by the Tenants, which shows the cost of the repair was \$1,968.75. The Tenant says he paid the invoice.

The Tenants provide copies of messages to the Landlord after the repairs were undertaken. The invoice was sent to the Landlord on September 10, 2021. Subsequent text messages sent by the Tenant on September 11, 2021, September 21, 2021, and October 17, 2021 requested that Landlord pay for the hot water tank. The Landlord did not respond to those text messages. The Tenant says that the Landlords have ignored requests for the return of the funds for replacing the hot water tank.

Analysis

The Tenants seek the return of funds paid they paid repairing the rental unit.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Policy Guideline #1 provides guidance with respect to the responsibility of landlords and tenants during a tenancy and clearly sets out that a landlord is responsible for maintaining major appliances and furnaces. Policy Guideline #1 does not specifically mention that landlords are responsible for hot water tank maintenance. However, given the guidance on major appliances and furnaces, I find that the Landlords were responsible for the maintenance of the hot water tank during the tenancy.

Based on the Tenant's undisputed testimony, I find that the Landlords failed to maintain and replace the hot water tank as was their responsibility under ss. 32 and 33 of the *Act*. I further find that the water leaking from the tank is a major leak and qualifies as an emergency repair under s. 33(1) of the *Act*.

The text messages provided by the Tenants show that the Landlords were notified of the hot water tank leak on September 7, 2021. The Landlord Y.Y.'s response on that date makes clear they asked the Tenants to arrange for the hot water tank's replacement and they would "cover the cost". I accept that the Tenant's undisputed testimony that the Landlords failed to cover the cost of the hot water tank replacement.

The Tenants provide an invoice in the amount of \$1,968.75, which the Tenant says was paid by them. This is supported by the text messages provided. Those text messages show multiple requests by the Tenants for the Landlord to repay them for the hot water tank replacement. Egregiously, the Landlords ignored those requests and never repaid the costs borne by the Tenants for the hot water tank, despite clearly communicating they would repay the Tenants for the expense. The Tenants could not have mitigated their damages under the circumstances. Indeed, their expense was entirely induced by the Landlord's assurance that they would "cover the cost".

I have little difficulty in finding that the Tenants are entitled to \$1,968.75 for the replacement of the hot water tank.

Conclusion

The Tenants have made out their claim for monetary compensation for the hot water tank replacement in the amount of \$1,968.75.

The Tenants were successful in their application. Accordingly, I find that they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Landlords pay the Tenants' \$100.00 filing fee.

Pursuant to ss. 67 and 72, I order that the Landlords pay **\$2,068.75** to the Tenants, representing the combined total of their monetary claim and their filing fee (\$1,968.75 + \$100.00).

It is the Tenants obligation to serve the monetary order on the Landlords. If the Landlords do not comply with the monetary order, it may be filed by the Tenants with the Small Claims Division of the Provincial 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: July 28, 2022

Residential Tenancy Branch