Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRT, MNSD, FFT**

Introduction

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

1. An Order to be paid back for the cost of emergency repairs that the Tenants made during the tenancy pursuant to Section 33(5) of the Act;
2. An Order for the return of part or all of the security deposit pursuant to Section 38 of Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager and the Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenants' Notice of Dispute Resolution Proceeding package served by registered mail, the Landlord confirmed receipt on March 25, 2022;
- the Tenants' evidence was served by registered mail on February 17, 2022, the Canada Post Tracking number is noted on the cover sheet of this decision; deemed served on February 22, 2022; and,

- the Landlord's evidence was served by Express Post on September 27, 2022, the Express Post Tracking numbers are noted on the cover sheet of this decision, the Tenants confirm receipt, deemed served on October 2, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Are the Tenants entitled to an Order to be paid back for the cost of emergency repairs that the Tenants made during the tenancy?
2. Are the Tenants entitled to an Order for the return of part or all of the security deposit?
3. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenants uploaded a copy of the tenancy agreement, and the parties confirmed that this tenancy began as a fixed term tenancy on December 1, 2021. The fixed term and the tenancy ended on January 31, 2022. Monthly rent was $1,900.00 payable on the first day of each month. A security deposit of $950.00 was collected at the start of the tenancy and the Landlord returned $289.90 to the Tenants at the end of the tenancy. The Landlord retained a $175.00 cleaning fee that was agreed to in the tenancy agreement, and the Landlord kept $485.10 which went towards the emergency repairs.

The Tenants testified that when they arrived at the rental unit, the propane was low. They contacted the propane company on December 8, 2021, but before the propane arrived the Tenants were out of town, and shortly after this time, the propane ran out and the rental unit froze up. The Property Manager called the service and repair company and on December 28, 2021 the repair invoice states:

Description		Price
Unit froze up. - search for curb shut off - no luck. Unfroze lock on door to gain entry. Replaced battery in door lock. Purge propane lines. Check all pipes and fixtures. Fridge water system has damage to be assessed, Fridge water is shut off.	S/C Labor Shop supplies	$75.00 $375.00 $16.00
	Subtotal	$462.00
	GST	$23.10
	PST	$0.00
	Total	$485.10

The Tenants said they were not informed of what level the propane tank must be at, but knew it was their responsibility to arrange for the propane tank to be filled. When they arrived at the rental unit, they called the Property Manager to inform him that the propane was low. The Tenants called the propane company to come and fill the propane tank. They had informed the Property Manager well before that they would be out of town around Christmastime.

The Tenants said they were told if there were any issues in the rental unit, that they were to call the Property Manager. While they were away, the Tenants were talking to the Landlord about the lack of heat situation in the rental unit, and getting the water turned off. Both parties engaged in calling the propane company, and the Property Manager made the call to the repair company.

The Property Manager had informed the Tenants that they should seek restitution from the propane company for the repair that was made. The Tenants did reach out to the propane company for compensation, and the propane company offered a discount on the delivery of more propane.

The repairs were urgent because the rental unit ran out of heat. The Tenants were in the rental unit for one day with no heat, and they did have one space heater to put on, but it was not enough to keep the unit warm. The Tenants said their electric bill skyrocketed. The Tenants contacted the Property Manager informing him that they had run out of propane. The Tenants said the Property Manager instructed the Tenants to purchase more space heaters, but the Tenants declined to leave the rental unit with space heaters plugged in and unattended for any period of time.

The Tenants said they were not neglectful, and because they did their due diligence to prevent this loss, they should not be held responsible. The repair bill was issued to the Property Manager, and the Property Manager kept $485.10 from the Tenants' security deposit. The Tenants did not agree that the Property Manager could take this repair money out of their security deposit.

The Tenants testified that they participated in a move-in condition inspection, and the Landlord forwarded them a copy of the report. At move-out, they did not participate in the condition inspection. Neither party testified that the Landlord offered a second opportunity to complete the move-out condition inspection. The Landlord forwarded the Tenants a copy of the report. The Tenants stated that the Property Manager sent them an email on April 11, 2022 that he would be filing a claim against the security deposit, but they did not receive any further notice from the Property Manager about the Landlord's claim for dispute resolution.

The Tenants testified that the tenancy ended on January 31, 2022, and they served their forwarding address on the Landlord on February 8, 2022 by registered mail. The Tenants provided a Proof of Service of forwarding address form #RTB-41 attesting to service of same. The Property Manager confirmed receipt of the Tenants' forwarding address.

The Property Manager testified that, according to the tenancy agreement, the Tenants were responsible for heat in the rental unit. The Tenants arrived at the rental unit on December 6, 2021 and sent a picture of the propane gauge level as requested which recorded the level around 21%-22% full. The Property Manager said to the Tenants in an April 11, 2022 email that, "*It was communicated to you at the beginning of your tenancy to ensure you have the propane set-up on auto refill or to call your [propane company] account when the level gets below 20% to ensure prompt delivery and that you do not run out of propane for heating the cottage*."

The Property Manager said there was a communication breakdown between the Tenants and the propane company about the delivery date. The Tenants left on December 21, 2021 for Christmas holidays to another town. The Property Manager testified that the Tenants called him about the non-delivery of propane, and both the Property Manager and the Tenants started calling the propane company. On December 27, 2021, the rental unit froze up as the temperatures were around -20°C. On December 29, 2021, the propane company came and filled the tank.

The Property Manager called the service and repair company to make the rental unit habitable again. He said they were lucky no major damage occurred due to the unit being without heat for those days.

The Property Manager said that if there was a malfunction, it would be the Landlord's responsibility to do the repairs. The Property Manager maintains that heating the rental unit was the Tenants' responsibility. The Property Manager said he knows there were calls between the Tenants and the propane company. The propane company did not deliver the propane as they were supposed to, and he stated he knew the propane company was having difficulties with their computer system.

The Property Manager felt it was the propane company who "*dropped the ball*." He wrote one Tenant on February 7, 2022 stating, "*Hopefully [propane company] will understand the delivery errors they made which led to this situation and compensate you for these additional costs*." The Property Manager believes that ultimately, the Tenants were responsible to ensure that the heat was on.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Emergency Repairs

Section 32 of the Act sets out landlords' and tenants' obligations to repair and maintain a rental unit. The landlord is responsible to ensure rental units and property meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

Pursuant to Section 33 of the Act, a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement and provides the landlord with a written account of the repairs. Emergency repairs includes repairs that are:

(a) urgent,

> *(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and*
>
> *(c) made for the purpose of repairing*
>
> *…*
>
> *(iv) damaged or defective locks that give access to a rental unit,*
>
> *…*

Both parties describe a situation that was out of their hands. The Tenants did their due diligence in contacting the propane company when noticing the propane level was low and being instructed by the Property Manager to do so. The Tenants also had informed the Property Manager they would be away over Christmastime, and while away continued to make attempts to contact the propane company, enlisting the Property Manager's help. The Property Manager knew that the Tenants made attempts to contact the propane company. The Property Manager knew that the propane company did not deliver the propane as they were supposed to, and he knew the propane company was having difficulties with their computer system. The Property Manager said he believed the propane company "*dropped the ball*".

The Property Manager took over completion of the emergency repair in accordance with Section 33(4) of the Act and contacted the service and repair company to come in and make the rental unit accessible and habitable once again. I find pursuant to Section 32 of the Act, it was the Landlord's responsibility to ensure the rental unit met health, safety and housing standards established by law. Taking over the emergency repairs in the rental unit after the freeze up, especially because the Property Manager knew the Tenants were not around, fell in line with the Landlord's obligations to repair and maintain the rental unit. The service and repair company sent the repair invoice to the Landlord. I find the Landlord is responsible to pay for the emergency repairs pursuant to Section 33(5) of the Act totalling $485.10.

The Tenants seek compensation for the cost of the repairs; however, this amount was taken out of their security deposit, and this is analyzed below.

Security Deposit

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the Act.

I accept the testimony of the Tenants, as well as the documentary evidence submitted, and I find the tenancy ended January 31, 2022. I also find that the Tenants' forwarding address was provided to the Landlord in writing on February 8, 2022 and the Landlord was deemed served with the forwarding address on February 13, 2022.

February 13, 2022 is the relevant date for the purposes of Section 38(1) of the Act. The Landlord had 15 days from February 13, 2022 to repay the security deposit in full or file a claim with the RTB against the security deposit. That date was February 28, 2022.

The Landlord did not repay the security deposit or file a claim with the RTB against the security deposit within 15 days of February 13, 2022. Therefore, the Landlord failed to comply with Section 38(1) of the Act.

Sections 38(4) of the Act states that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. The tenancy agreement addendum states, and the Tenants positively testified, that the Landlord may retain $175.00 for a cleaning fee for the rental unit.

Given the above, I find the Landlord failed to comply with Section 38(1) of the Act in relation to the security deposit. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenant, less the amount the Tenants agreed the Landlord could retain at the end of the tenancy, pursuant to Section 38(6) of the Act.

RTB Policy Guideline #17-Security Deposit and Set off provide a statement on the policy intent of the legislation and assists parties to understand the application of security deposits and set offs at the end of a tenancy. Part C of Policy Guideline #17

describes the handling of the security deposit in this matter. The Landlord must return **$1,260.10** ($950.00-$175.00 = $775.00 X 2 = $1,550.00 - $289.90 (amount actually returned)) to the Tenants. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

As the Tenants are successful in their claim, they are entitled to recovery of the application filing fee. I award the Tenants reimbursement for the **$100.00** filing fee pursuant to section 72(1) of the Act.

The Tenants total Monetary Award is $1,360.10 ($1,260.10 + $100.00).

Conclusion

I grant the Tenants a Monetary Order in the amount of $1,360.10, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: October 26, 2022

Residential Tenancy Branch