



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, RR, RP, PSF, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for damages or compensation pursuant section 67;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the landlord and the tenant attended the hearing. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord’s evidence. Neither party had any issues with timely service of documents.

Preliminary Issue

The parties agree that at the time the tenant filed his application for dispute resolution, he was occupying the rental unit. The unit was sold just prior to the tenant moving out on the last day of August. As the parties are no longer bound by a landlord/tenant relationship, the following aspects of the tenant’s application were dismissed without leave to reapply:

- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for damages or loss?

Is the tenant entitled to a rent reduction?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that the rental unit is the upper unit in a house containing both an upper and lower unit. A copy of the tenancy agreement was provided as evidence. The month to month tenancy began on April 1, 2020 with rent set at \$3,000.00 per month payable on the first day of each month. On the tenancy agreement, at part 3 [Rent] is the notation: *tenant to pay 80% of Fortis & BC Hydro and both accounts to be in the tenant's name.*

The tenant testified that prior to the tenancy, he responded to the landlord's Craigslist ad, reproduced below with identifying information removed:

\$3,000 / 4br - 2200ft² - Large yard, dog friendly cul de sac (city name) ©

craigslist - Map data © OpenStreetMap

4BR / 2Ba 2200ft² available now | cats are OK - purrr | dogs are OK – woof |
house | w/d in unit | attached garage

This beautiful upper level family home in a kid friendly cul-de-sac with large yard that backs onto [undisclosed] Creek:

- 4 bedrooms
- 2 bathrooms
- covered front and back patio
- tons of storage
- double 2 bay garage
- gas fireplace

- granite counter tops
- updated kitchen
- kitchen islands
- gas BBQ
- Electric fireplace in master bedroom (optional)
- built in custom blinds on all windows
- walking distance to [named] Elementary
- parks and trails near by
- bus stop right around the corner
- in floor bathroom and kitchen heating
- hot water on demand
- utilities are 80%
- pet friendly
- upstairs and downstairs laundry (downstairs laundry is shared with very nice and quiet tenant)
- lots of windows
- beautiful stone fireplace
- built in 60" flat screen TV above the fireplace can be left if desired
- room for 4 cars in driveway
- Flexible and family oriented landlord

Please contact [landlord's name- withheld]

The tenant testified that although he agreed to pay 80% of the hydro costs, the defective fireplace caused his hydro bill to be unreasonably high. The tenant seeks to have the landlord cover 50% of his hydro. The tenant argues that the craigslist ad misrepresented the unit because the landlord corresponded with him indicating the rental unit was to be primarily heated by gas. The tenant points to his hydro bills going up in the winter months and a text dated March 31, 2021 from the landlord asking if he's using the gas fireplace as the main heat source. The tenant argues that this text is indicative of the landlord acknowledging it is.

The tenant testified he told the landlord at least 3 times the house was cold and 5 times that the fireplace was malfunctioning. When the landlord brought in a gas fitter to look at the downstairs fireplace, the landlord wouldn't replace it because it was no longer up to code. The quotes to do the work was too high, so the landlord sold the rental unit instead.

The tenant argues that the quote of close to \$30,000.00 was to have a heat pump installed, not just to have the downstairs gas fireplace hooked up at a cost of \$400.00, estimated by the tenant. The tenant testified he requested reductions in hydro utility but the landlord refused to respond.

The tenant also seeks compensation of \$500.00 per month rent reduction for 26 months from April 2020 to June 2020 because the fireplace was faulty. The upstairs gas-powered fireplace was malfunctioning and the second one was missing. The tenant sees the fireplaces as major heat sources for the rental unit. During testimony, the tenant acknowledged he could not quantify how he arrived at \$500.00 per month as a rent reduction, but stated it was cold in the house during the winter. The electricity used to heat the rental unit was beyond normal.

The landlord gave the following testimony. She is a licensed property manager, managing several properties. Utilities are frequent causes for concern in her experience. When screening the tenant, she asked the tenant whether he was confident he could afford the rent and utilities on his own. The tenant responded with *“Yes, I am confident in my income to cover those expenses!... an extra \$300 - \$500 per month if I get that home, it’s worth the extra expenses due to it being a nice place to live and make it feel like home...”*

Based on the tenant’s reassurance he could afford the rent and utilities, the parties entered into the tenancy agreement.

The landlord asserts that the upstairs fireplace functioned as an additional heat source for the rental unit however the primary heat source for the house built in 1974 was the electric baseboard heaters. When the tenant notified the landlord on April 1, 2021 that the living room fireplace was having issues, a technician was called and in the invoice, the technician noted “all appears to be working properly though valve size adjustment does little to change size”. On April 12th, the tenant sent the landlord a text saying ““seems nice and warm, and fired up much easier, so looks promising...”

On October 5, 2020, the tenant sought to increase the number of occupants in the rental unit and the landlord agreed. In emails sent October 9 and 10th, the landlord offers to adjust the cost sharing of gas and electricity but the tenant declines, saying he is OK without any additional adjustments to keep things fair and consistent with the lower tenant.

The landlord argues that the lower fireplace was removed before the tenancy began because it did not meet current building codes and reinstalling the old one would not be safe. The lower fireplace was not part of the tenancy agreement.

Lastly, the landlord provided summaries of the previous hydro usages, together with BC Hydro electricity summary reports:

2016 – 2017:

- a family of 3, the annual cost = \$2,909.23/ 12 months = \$242.43 per month

2017 – 2019:

- A family of 3, plus 1 basement tenant, the annual cost = \$5,855.16 / 24 months = \$243.96 per month

For the tenant:

2020:

TOTAL 10 Months \$2,820.62 Divided per month \$282.06 Actual due by tenant:(80%)
\$225.65 per month

2021:

TOTAL 12 months \$3,305.88 Divided per month \$275.49 Actual due by tenant: (80%)
\$220.39 per month

2022:

TOTAL 4 months \$1,628.79 Divided per month \$407.20 Actual due by Dave (80%)
\$325.76

The landlord argues that the monthly total is less than the \$300 to \$500 the tenant stated he was capable of covering in his text to the landlord before the tenancy began. It is also in line with what the previous occupants of the house were paying throughout their tenancy.

Lastly, the landlord submits that the baseboard heating, in floor heating was working throughout the tenancy. The upstairs fireplace, while finicky, was operational. If the tenant was unhappy with the living situation, he had the opportunity to end the tenancy or accept the landlord's offer to renegotiate the hydro fees which he declined to do.

Analysis

Pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the Act or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the Act by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the Act on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The tenant seeks a redistribution of hydro expense, from 80% as agreed to in the tenancy agreement to 50%. The reason for the request is because the tenant attributes higher hydro costs to the erratic functioning of the upstairs fireplace and the lack of a fireplace downstairs.

The landlord argues that the house was built in 1974 and the primary heating source for the house is electric baseboard heating. Without any documentary proof to substantiate that the natural gas fireplace primarily heats the house, I find the landlord's stance to be more reasonable than the tenant's. The tenant points to a text message where the landlord asks the tenant if he is using the fireplace as a primary heating source, however I don't find that text to be conclusive proof that the electric baseboards were not the primary heating source. I find it more likely than not that the primary heating source for the house is electric baseboard heating.

I turn to the tenancy agreement, and I note that the tenant pays both hydro and natural gas, or at least 80% of it. The tenant did not bring my attention to any natural gas bills, but it is safe to assume that if his hydro bills were to go down due to using the fireplace to heat the house, then the gas bills would naturally increase. To what extent is unknown, but the argument that there is a net savings was not fully presented by the tenant.

Lastly, I have carefully considered the landlord's evidence showing hydro consumption from 2016 all the way to April 2022 and I find the tenant's average monthly usage to be consistent to previous years. Most notably, the monthly usage falls below the \$300 to \$500 utility fees the tenant told the landlord he could cover when applying for the tenancy.

I find the landlord has not breached any portion of the tenancy agreement, the Act or the Regulations (points 1 and 2 of the 4-point test). For this reason, I dismiss the tenant's application seeking the landlord to cover 50% instead of 80% of the hydro costs.

The second portion of the tenant's claim is to have his rent reduced from \$3,000.00 to \$2,500.00 per month for the duration of the tenancy. In the application, the tenant notes that not having the fixtures in full operation caused significant stress financially; in the form of uncomfortable temperature in the house; and stress/difficult communication with the property manager in recent interactions. I find that this portion of the application fails on multiple points.

First, I have read the tenancy agreement and the craigslist ad carefully and there is no mention of a natural gas fireplace in the lower level of the house. There is no contractual obligation for the landlord to install it after the tenancy begins, unless the requirement to do so is set out in the tenancy agreement, an addendum to it or the condition inspection report. I have no evidence that there was any such agreement. The evidence provided by the landlord shows that once she was made aware that the upper fireplace was not functioning perfectly, she sent a professional contractor to investigate and repair it. I accept the landlord's assertion that it performed the function of providing "*heat and ambience the way it was designed to*". I do not find the landlord breached the Act, tenancy agreement or regulations (point 2 of the 4-point test).

The tenant did not draw my attention to any documentary proof to establish how his discomfort is valued at \$500.00 per month. Likewise, it is reasonable to assume that

the tenant did not require the use of the fireplace during the spring or summer, leading me to discount his claim that he experienced discomfort for at least half the year. (Point 3 of the 4-point test).

Lastly, the first mention of the faulty heat came in March 2021, yet the tenant seeks a \$500.00 per month discount going back to April 1, 2020. The tenant seeks compensation for a time that he did nothing to make the landlord aware of any issue. I find the tenant failed to mitigate the damage sought (point 4).

For the reasons set out above, the tenant's application seeking a rent reduction is dismissed without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

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: December 21, 2022

Residential Tenancy Branch