



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ABLE MACHINERY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me for the following orders against the landlords.

1. Cancellation of a 10-day Notice to End Tenancy for Unpaid Rent, issued on or about 5 April [the 'Notice'].
2. Compliance with section 33 (5) of the *Residential Tenancy Act* [the 'Act'].
3. Reimbursement for the \$100.00 filing fee for this application.

The tenants appeared at the hearing on 26 May 2023. The landlords did not.

Preliminary Matter - Non-appearance at the Hearing

The landlords did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1330 hours and ended about 90 minutes later. I confirmed:

1. that the tenants affirmed that they sent *via* registered mail on 21 April a copy of this notice of hearing to the address of the landlords that they used in drafting the Notice;
2. that the RTB had provided the correct call-in numbers and participant codes in the notice of hearing; and
3. by reviewing the teleconference system, that the tenants and I were the only ones who had called into this teleconference.

Rule 7.3 of the RTB Rules of Procedure reads:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlords failed to attend this hearing, but I conducted it in their absence. The tenants' evidence satisfied me that they had correctly notified the landlords of this hearing and how to participate.

Issues to be Decided

Should I cancel the Notice?

Did the tenants have emergency repairs made to the rental unit? If so, then must the landlords reimburse the tenants for those repairs?

Should the landlords reimburse the tenants for the cost of filing this application?

Background and Evidence

The tenants told me that they pay \$2,700.00 rent to the landlords, which is due on the 15th day of each month. They pay rent by way of post-dated cheques [the 'Cheques'].

The tenants are not the only occupants of the building: they have house-mates. These house-mates pay rent to the tenants.

All rental units in the building are heated by a single furnace [the 'Furnace'].

And the tenants typically communicate with the landlords *via* telephone and text message.

They also told me the following about what happened with this tenancy in the last few months:

- in December last year, during what the tenants described as the two coldest weeks in their city, they noticed (on 8 December) that the Furnace wasn't working, and so they texted the landlords by telephone;
- temperatures in the building dropped to single digits;
- the landlords immediately responded, saying they would have it fixed within a few hours;
- on 9 December the Furnace again did not work, and so the tenants texted the landlords again by telephone;
- the landlords investigated, and offered to reimburse the tenants for the cost of some space heaters as a temporary remedy;
- the tenants bought these heaters on 12 December, but could still not raise the temperature of their unit above 12 or 14 degrees;
- by 16 December, conditions were 'really cold' and the tenants feared the pipes might freeze (as they had done in the past);
- on 17 December the landlords assured the tenants that repairs would be completed that day;
- on 18 December, the Furnace was still not working, and the tenants were concerned about their electricity bill for the space heaters [the 'Increased Electricity Bill'];
- they told the landlords *via* text that if the Furnace is not fixed the following day, they will hire their own electrician and that the landlords, 'can pay us back';
- the tenants received no response;
- on 20 December the tenants requested a reduction to their rent because of the cold [the 'Rent Reduction'] and asked the landlords to contribute to their Increased Electricity Bill;
- on 21 December, the landlords agreed to a Rent Reduction in the amount of \$1,500.00 and to let the tenants hire their own electrician to repair the Furnace;
- the tenants contacted about ten different electricians but, because of the time of year, had difficulty finding anyone available;
- in the meantime, the tenants' house-mates left the building to find somewhere else to stay because of the cold;
- at some point, the Furnace started heating the building again, but then could not be adjusted: it ran all the time, and increased the temperature in the unit to about 35 degrees - chocolate left on the counter melted, and the tenants were concerned that the Furnace had become a fire hazard;
- finally on 22 December the tenants found an electrician to come and look at the Furnace, and the tenants told the landlords *via* text that they will deduct the amount of the repairs from their next rent payment;

- on 23 December, the landlords told the tenants to cancel that electrician because the Furnace was now working;
- dissatisfied, the tenants proceeded to have a repairman attend;
- the repairman attended for an initial inspection [the 'Inspection'], and immediately shut off the Furnace and told the tenants not to turn it back on because it was unsafe;
- the repairman also told the tenants that the installation of the Furnace was one of the worst he'd ever seen, and exhaust fumes from the Furnace were leaking back into the building, tripping the carbon-monoxide alarm;
- the repairman felt obliged to alert the city to the hazard presented by the Furnace; and
- the repairman repairs the Furnace and the tenants pay his bill [the 'Repair Bill'].

The tenants said that they sent copies of the paid Repair Bill (which set out the nature of the repairs made) and of their payment for the Inspection to the landlords as soon as they were able.

The tenants decided they should refund some of the rent that they charge to their house-mates to compensate them for the cold [the 'Refunds'].

To compensate themselves for the expenses they bore in dealing with the Furnace issues, the tenants cancelled Cheques for January and February rent. In response, on 5 April the tenants received the Notice attached to their door.

The Notice cites \$5,400.00 of unpaid rent for February and March as the basis to end the tenancy. The tenants deny failing to pay rent for March.

On 7 April, the tenants filed this application. In drafting their application, they referred to incurring expenses of about \$7,000.00. A copy of this application was included by the RTB in the notice of hearing that the tenants affirm they served upon the landlords.

In detailing their expenses during this hearing, the tenants set out the following figures:

1. Inspection = \$198.45
2. Repair Bill = \$2,943.35
3. Refunds = \$500.00
4. time spent by tenants to address these issues = \$800.00 (at \$100.00 *per* hour)
5. Increased Electricity Bill = \$262.17
6. bank fees to cancel Cheques = \$36.00

This totals \$4,739.97.

The tenants add to this the \$1,500.00 Rent Reduction, as well as a further \$300.00, for a total of \$1,800.00. They decided on this figure because when the landlords offered to reduce rent by \$1,500.00, the tenants had been without heat for 14 days. They told me that they considered, therefore, that \$100.00 *per* day without heat was a fair reduction. And, as they were without heat for a total of 18 days, then the Rent Reduction should be \$1,800.00.

This would then bring the total amount of the tenants' claim to \$6,539.97.

Having withheld \$5,400.00 of rent, the tenants then ask me to order that the landlords are liable for a further \$1,139.97, plus the \$100.00 to file their application.

Analysis

Based on the uncontroverted evidence of the tenants, I find that as the Furnace was the only heating system for the building that this was the 'primary heating system' *per* section 33 (1) (c) (iii) of the Act. I am also satisfied that, as the Furnace failed in December, it needed to be repaired urgently and necessarily for the use of the property during the winter.

While I have no direct evidence that the telephone number at which the tenants called the landlords regarding the Furnace was the number to call for an emergency repair *per* section 33 (2) of the Act, I am satisfied that, based on the response of the landlords to that call, the tenants called the appropriate number for emergency repairs.

Section 33 (3) of the Act sets out the preconditions that a tenant must meet in order to have emergency repairs made. I have reviewed that section, and am satisfied that the repairs were needed: the failure of the Furnace resulted in cold temperatures in the unit, such that the house-mates of the tenants eventually left. The tenants made at least two attempts to telephone the landlords about repairing the Furnace, on 8 and 9 December. They then gave the landlords almost two weeks to make the repairs.

When the landlords failed to make these repairs, the tenants arranged on their own to have the repairs made. Initially, the landlords even consented to this arrangement.

I accept that the tenants twice claimed reimbursement for the repairs, on 18 and 22 December. I also accept that the tenants gave the landlords a written account of the repairs, and receipts for having paid for those repairs (by way of the Repairs Bill and the paid invoice for the Inspection).

I also accept that the landlords have not reimbursed the tenants for these repairs.

It is clear to me that the Repairs Bill and the Inspection are 'repairs' as contemplated by section 33. And the tenants have justified withholding those amounts from their rent payments (totalling \$3,141.80).

What about the other amounts that the tenants claim? I should more properly consider these under section 67 of the Act.

I find that the parties originally agreed to a Rent Reduction of \$1,500.00. Though the tenants say that amount should only reflect an appropriate compensation for the cold experienced up to the date of the agreement, I am not convinced that the landlords intended to offer a daily rate of compensation so long as the problem persisted. Had the issues with the Furnace continued into January, then an argument could be made for adding to the agreed-upon Rent Reduction. But as it stands, I find a reduction of \$1,500.00 (more than half the rent for December) to be a reasonable amount.

Connected with this is the claim for the bank fees to cancel the Cheques for two-months rent. Was this necessary? The uncontested evidence of the tenants at the hearing recounted a deteriorating relationship between them and the landlords during the weeks dealing with the Furnace. In light of that relationship, and of the Notice itself, I am satisfied that the landlords would have cashed the Cheques in spite of the tenants' claims to withhold rent. As a result, in these particularly-acrimonious circumstances, it was necessary for the tenants to cancel these Cheques so as to protect their interests.

What of the time the tenants spent dealing with the Furnace? They argue that the landlords should owe them \$800.00 for their time. They base this on their estimate of how much time they spent on the issue: eight hours. And they say that because in their business they charge clients between \$60.00 and \$120.00 *per* hour, the landlords owe them \$100.00 *per* hour for their time dealing with the Furnace.

The tenants have two challenges with this argument. The first is that eight hours is an estimate: they did not otherwise track their time, as, say, a client might expect to see when receiving an invoice for eight-hours work. On what dates did the tenants spend this time, and in what amounts on the those dates, and by doing what? There is simply not sufficient detail to support their estimate of eight hours and convince me of its' reasonableness.

The second is the foundation of this claim. If I were, say, a lawyer, it might be reasonable to assert that, in order to repair my apartment, I had to cancel a particular appointment with a client, and thereby lost the opportunity to bill for that appointment, and so you owe me for that lost opportunity. But it is less reasonable to claim that you should pay me the time I spent repairing my apartment as if I had been meeting with you as my client, because perhaps I could have spent that time more profitably. The first is a clear instance of a lost opportunity. The second is much more speculative.

I do not grant the \$800.00-portion of this claim: it is insufficiently supported by detail, and I am unconvinced of its foundation. As RTB guideline 16 ('Compensation for Damage or Loss') suggests: 'A party seeking compensation should present compelling evidence of the value of the damage or loss in question.' There is not compelling evidence of this particular loss.

I am satisfied, however, that the Increased Electricity Bill was caused by the failure of the Furnace. And I am also satisfied that the Refunds were reasonable: the house-mates found conditions so cold that they found somewhere else to reside while the Furnace was being repaired.

I will summarise my decision on these losses as follows:

Loss	Claimed	Granted
Inspection	\$198.45	\$198.45
Repair Bill	\$2,943.35	\$2,943.35
Refunds	\$500.00	\$500.00
time spent	\$800.00	\$0.00
Increased Electricity Bill	\$262.17	\$262.17
Cheque cancellations	\$36.00	\$36.00
<i>subtotal</i>	<i>\$4,739.97</i>	<i>\$3,939.97</i>

Rent Reduction	\$1,800.00	\$1,500.00
<i>subtotal</i>	\$6,539.97	\$5,439.97
rent withheld	-\$5,400.00	-\$5,400.00
TOTAL	\$1,139.97	\$39.97

Because the tenants succeeded in their application, I will add to this total the \$100.00 they spent to file their application.

Conclusion

I cancel the Notice and order that the tenants may reduce their next rent payment in the amount of \$139.97.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 22 June 2023

Residential Tenancy Branch