



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes RR, RP, FFT

Introduction

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

- an order pursuant to s. 65 for a rent reduction;
- an order pursuant to s. 32 for repairs; and
- return of the filing fee pursuant to s. 72.

C.S. and W.R. appeared as the Tenants. V.K. appeared as agent for the Landlord.

The parties 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. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Preliminary Issue – Sale of the Property

Through the course of submissions, the Tenants advise that the respondent Landlord sold the property since they filed their application. The Landlord’s agent confirms the sale closed on February 17, 2023.

The Tenants claim for repairs, which can only be advanced by the current landlord and property owner. Given this, I dismiss this claim with leave to reapply, provided the claim is made against the current landlord.

The claim for a rent reduction is limited to a past rent reduction claim for a period in the month of January 2023. This claim, if granted, would be made against the respondent Landlord as they received the Tenants' rent payment over the relevant period. In other words, the sale of the property has no impact on the Tenants' past rent reduction claim.

Issues to be Decided

- 1) Are the Tenants entitled to a past rent reduction?
- 2) Are the Tenants entitled to their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

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

- The Tenants moved into the rental unit on January 6, 2023.
- Rent of \$10,000.00 was due on the first day of each month.
- A security deposit of \$5,000.00 was paid by the Tenants.

I am provided with a copy of the tenancy agreement by the parties. The parties described the rental unit as a single detached house with a main floor, upper floor, and basement.

1) *Are the Tenants entitled to a Past Rent Reduction?*

Pursuant to s. 65 of the *Act*, where a landlord is found to have not complied with the *Act*, Regulations, or the tenancy agreement, the director may grant an order that past or future rent be reduced by an amount equivalent to the reduction in the value of the tenancy agreement. Generally, rent reduction claims are advanced when services have been terminated or suspended for repairs.

The Tenants advise that there was an issue with the radiant floor heating for the upper floor of their rental unit, which is where their bedrooms were located. They tell me that the master bedroom was always warm, more than 30 degrees Celsius, regardless of whether the heat was turned on or not. They also tell me that the other bedrooms were very warm when the heating system was turned on, regardless of the temperature it was set.

The Tenants tell me that they could not operate the heating system properly in the month of January, such that it was either very warm or very cold. The Tenants confirm that the heating issue was limited to the upper floor and did not affect the other areas of the house.

The Tenants further advise that they notified the Landlord of the issue on January 11, 2023 and that the matter was not fixed until January 28, 2023. They seek \$5,483.80, which represents a 100% rent reduction over the 17-day period the heating system was not functioning properly.

The Landlord's agent does not dispute that the heating system was not working properly, or the relevant dates provided by the Tenants. However, the Landlord's agent advises that the house is approximately one-year old and still covered by a builder's warranty, such that it had to be addressed by the original contractors otherwise there would be a risk that the warranty would be void. The Landlord's agent argued that the Landlord was doing the best it could and did not delay in having the problem fixed.

There is no dispute over the relevant facts in this matter. The heating system was malfunctioning affecting the upper floor. The issue was reported to the Landlord on January 11, 2023 and repaired on January 28, 2023. Though I appreciate the Landlord's argument that it was acting diligently, this does not negate the fact that the Tenants were without a properly functioning heating system for 17-days in the month of January. I find that the Landlord failed maintain and repair the property in contravention of s. 32 of the *Act*, thus giving rise to a claim for a rent reduction.

The Tenants seek a 100% reduction in their rent over this period. I find that this is disproportionate to the loss of the heating system for a third of the house. The rental unit was still habitable, and the Tenants still had general use of the premises as living accommodation. I have been provided no evidence to suggest that the heating system was malfunctioning elsewhere in the home other than the upper floor.

I find that an appropriate rent reduction considers that only a third of the house was affected, such that the Tenants are entitled to a 33% rent reduction for the 17-day period. In this case, I find that the total past rent reduction is \$1,827.95 $((\$10,000.00/31) \times 17)/3$.

2) *Are the Tenants Entitled to their Filing Fee?*

The Tenants were partially successful in their application. I find that they are entitled to their filing fee. I order pursuant to s. 72 of the *Act* that the Landlord pay the Tenants \$100.00 filing fee.

Conclusion

Pursuant to ss. 65 and 72 of the *Act*, I order that the Landlord pay **\$1,927.95** (\$1,827.95 + \$100.00) to the Tenants.

It is the Tenants obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be enforced at the Provincial 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: June 07, 2023

Residential Tenancy Branch