Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The "***Act***") in response to applications from both parties. The Tenants filed two applications, the first on October 11, 2023, and the second on December 6, 2023. In their applications the Tenants seek:

- A monetary order for damage or compensation under the *Act*, as well as a reduction in their rent on a retrospective basis pursuant to sections 65 and 67 of the *Act*. The total for both claims is $34,906.26.
- Orders for repairs to the Rental Unit, provision of services or facilities required by the tenancy agreement or by law, and an order for the Landlord to comply with the *Act*.
- Authorization to recover the filing fee for both of their applications from the Landlord.

The Landlord filed their application on December 20, 2023, and they seek:

- A monetary order for money owed or compensation for damages or loss in the amount of $4,126.00.
- Authorization to recover the filing fee of their application from the Tenants.

Service

The Landlord was present at the hearing with their lawyer, M.N. M.N. stated that the Landlord takes no issues with the service of the Tenants' two applications and their evidence to the Landlord. The Tenants provided tracking numbers for both of their applications, which were sent by registered mail. I have copied both tracking numbers on the cover page of my decision. M.N. further submitted that the Landlord has received all the Tenants' evidence prior to the hearing. I find that the Landlord was served with the Tenants' two proceeding packages and their documentary evidence in accordance with sections 88 and 89 of the *Act*.

The Tenants acknowledged receipt of the Landlord's application and evidence by email. The Landlord submitted a copy of the two emails their agent, J.L., sent to the Tenants. The Landlord also submitted a copy of a complete RTB-51 Address for Service form, dated March 17, 2023, which is signed by W.D. (tenant) and J.L. The Tenants raised no service issues. The Landlord also served the Tenants by registered mail at the Rental Unit. The tracking number is listed on the cover page of my decision. I find that the

Landlord served the Tenants with their application and evidence in accordance with sections 88 and 89 of the *Act*, by pre-agreed email. In the alternative, registered mail is also an effective form of service, notwithstanding the fact that the Tenants did not take delivery of the Landlord's package.

Background Facts and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant to my decision.

The parties agreed that this tenancy began on April 20, 2023, and that the current rent is $9,500.00, due on the first day of every month, with a security deposit of $4,750.00.

The parties agreed that the Rental Unit is primarily heated with a radiant floor heating system. The parties also agreed that the Rental Unit has four fireplaces and a baseboard electric heater in the basement bathroom. The Tenants provided undisputed testimony that none of the fireplaces are in the Rental Unit's bedrooms.

The parties took part in a previous round of arbitration regarding heating issues in the Rental Unit, which led to a settlement agreement on November 9, 2023 (the "Agreement"). I have copied the related file number on the cover page of my decision. The Agreement is as follows:

1. Within two weeks of the date of the hearing the landlord shall retain a technician to inspect all heat sources in the rental unit, including but not limited to the heat pump, baseboards in the bathrooms, in-floor radiant heating and four gas fireplaces.
2. 24 hours prior to the technician's attendance, the tenants are to grant the landlord's representatives access to the rental unit for at least four consecutive hours so that the landlord can ensure all heat sources have been turned on.
3. The landlord shall give the tenant 48 hours notice of the time and date of the technicians attendance at the rental unit and 24 hours notice of the time and date of the landlord's representatives attendance at the rental unit.
4. The landlord is at liberty to request compensation from the tenant for the technician and the representatives' time at the rental unit should the technician determine the heating sources are operational.
5. In the event the heating sources are inoperable, the tenant is at liberty to apply for monetary compensation from the landlord for any devaluation in her tenancy.
6. Both parties agreed that these particulars comprise the full settlement of all aspects of the tenant's current application for dispute resolution.

The Tenants' agent, Y.C., testified that the Tenants have had issues with heat at the Rental Unit since moving into the Rental Unit and these issues remained unresolved until November 15, 2023, when a technician was brought in pursuant to the parties' Agreement.

Y.C. testified that the Tenants are seeking the following monetary amounts, which total $34,906.26:

- 60% rent reduction for rent paid in April (10 days) and for the entire month of May - $12,666.67 x 60% for Inoperable heat: **$7,600.00**.
- 25% rent reduction for rent paid from June 1, 2023, to August 31, 2023 - $28,500 x 25% for Inoperable heat: **$7,125.00**.
- 60% rent reduction for rent paid in September 2023. $9,500.00 x 60% for Inoperable heat: **$5,700.00**.
- 80% rent reduction for rent paid in October 2023. $9,500.00 x 80% for Inoperable heat: **$7,600.00**.
- 100% rent reduction for 15 days of rent in November 2023, for Inoperable heat: **$4,750.00**.
- Lost wages: **$900.00**.
- RTB filing fees: **$200.00**.
- Inspection report: **$850.00**.
- Purchase of space heaters from The Home Depot: **$181.26**.

M.N. stated that the Landlord is seeking the following monetary amounts from the Tenants, totaling $4,126.00:

- M.M. inspection invoice dated September 13, 2023, for inspection of the Rental Unit's heat on September 12, 2023: **$255.15**.
- M.M. inspection invoice dated November 16, 2023, for inspection of the Rental Unit's heat on November 15, 2023: **$920.85**.
- M.N.'s legal fees: **$2,500.00**.
- J.L.'s (the Landlord's agent) fees for attending the Rental Unit on November 15, 2023, pursuant to section "4." of the Agreement: **$350.00**.
- RTB filing Fee: **$100.00**.

The Tenants submitted an invoice for consultation fees with a lawyer named J.L., for a one-hour consultation at $450.00. With taxes, the total amount of the invoice is $504.00. The Tenants did not testify regarding this invoice, and it is not readily apparent why their counterparty would be responsible for paying this invoice.

The Tenants submitted a copy of their July 22, 2023, inspection report for the Rental Unit. This inspection report was completed by ASTTBC, and it is a comprehensive report for the entire Rental Unit, not just the Rental Unit's heating elements (the "July Tenants' Report"). The Landlord's lawyer, M.N., stated that this report was commissioned by the Tenants without the Landlord's knowledge. M.N., further stated that the July Tenants' Report was completed by a building inspector commissioned to inspect an entire house, and not by a heating inspector that was called in to purely inspect the Rental Unit's heating sources. Y.C. testified that the Tenants were new to Canada and did not know whom to call and what service to bring. Their aim, Y.C.

testified, was to have someone brought in to inspect the Rental Unit's heating as they were having issues with heat at the time.

M.N. directed me to the parties' digital communication (the parties submitted text message and email communication between the Landlord's agent, J.L., and the tenant W.D.). M.N. stated that these messages show that the Tenants began relying on this report shortly after it was given to them and started picking fault with various aspects of the Rental Unit. M.N. stated that there is no indication that the Tenants notified the Landlord of any heating issues until September 2023.

The July Tenants' Report makes the following references to the Rental Unit's heating sources:

- Page 3: "the radiant floor heating does not seem to work; all thermostats have been turned on for over 5 hours, they all show "heat on", by my infrared thermal camera did not pick up any heat signals. It is recommended to have qualified contractor to further review, confirm the issue, and make repairs." [underlined for emphasis].
- Page 4: "the basement washroom electrical heater does not work."

The July Tenants' Report states that the radiant floor heating system is the Rental Unit's primary heating system. It further states that the boiler for the radiant floor system was manufactured in 1993 and that the typical service life for the boiler is 25-35 years.

I have reviewed the parties' submitted evidence. On August 21, 2023, W.D. sent a letter to the Landlord. In this letter, one of the grievances of the tenant is the low temperature in the Rental Unit. W.D. states that the "floor heating in the rooms are not working. We are freezing at night!"

The Landlord's position at the hearing was that there has never been anything wrong with the Rental Unit's primary heating source and the Tenants were experiencing issues because of user error. M.N. referred me to inspectors' notes and invoices from September 12, 2023, and November 15, 2023 (the "September Inspection" and "November Inspection" respectively).

In the September Inspection invoice, technician "Kyle" states the following (copied verbatim from the invoice, but highlighting is mine):

> September 12 – Looked at boiler/infloor heating. When technician arrived all the thermostats were turned off, turned all thermostats on. Boiler fires and could feel supply lines getting hot. Two zone valves on top floor were also getting hot. (six zones in total) the pump is working and moving water, return is still coming back cold. Technician informed customer it will take up to 24 hours to heat up all the cold concrete in the hours [*sic*]. Customer was turning on for 4-6 hours and then turning it off because they were not noticing any change in heat. From our side of

> things, the Boiler is producing hot water and the pump is moving the water. Boiler is cycling on and off at a normal rate, which shows good water movement. Technician advised customer if after a full day you do not notice any difference then to call us. We will bring a infrared camera and check the floors.

The tenant W.D. testified that they did not notice any change after 24 hours, and they called the technician per the recommendation on the invoice, but they did not receive a response.

In the November Inspection invoice, technician "Justin" states the following (copied verbatim from the invoice, but highlighting is mine):

> November 15 – [Landlord's agent's] tenants claimed Boiler isn't heating up. Arrived with thermal camera and found Boiler to be running, but pump when entire house was calling under amping weak at .42 rating for .70. Supplied and changed out pump, flushed air and re-checked system overall operation with thermal camera, floor getting warm. Set t-stats at 70 advised customer to leave it overnight. Checked basement bathroom electric heating, getting 220 volts but not turning on, not working.

The basement electric baseboard heater was replaced by the Landlord's technicians two days later, on November 17, 2023. The Landlord's agent, J.L., submitted two affidavits, wherein they depose to various obstacles set by the Tenants. J.L. deposes that before calling inspectors and repair technicians, J.L. must be able to confirm issues, and had they been allowed to inspect the electric heater sooner themselves; they would have had it replaced even faster. The Landlord's submitted digital communication between J.L., and W.D. shows that they had much difficulty communicating. Often, W.D. would report a problem, and J.L. would ask for pictures of thermostats for confirmation. W.D. would then ask J.L. to come and inspect the issues themself as it is their job to do so.

On November 16, 2023, technician Justin sent a follow-up letter to J.L., regarding the inspection they completed the day prior (underlining mine):

> I would just like to provide a timeline regarding the heating observations yesterday at the above address that you and I went over:
>
> Temperature on the outside was 5 degrees = 41-degree F when you arrived.
>
> **10:00am**
>
> - temperature showed at thermostats inside the house was 61-62-degree F
> - thermostats were set to 67–68-degree F by the tenant
> - 2 out of 6 thermostats were at off positions
> - window in living room was opened

10:10am

- temperature showed at thermostats inside the house was 61-62-degree F
- thermostats were set to 67–68-degree F by the tenant
- 2 out of 6 thermostats were at off positions

11:00am

- checked temperature, all thermostats were a bit up on temperature to 62-63 degree F

12:00pm

- checked temperature, all thermostats were a bit up on temperature to 63-64 degree F

1:00pm

- checked temperature, all thermostats were a bit up on temperature to 64-65 degree F

1:45pm

- all thermostats were at 64-65 degree F
- temperature were up 3-4 degree F in 3 hour 30 minutes
- We at [redacted] came, checked temperature.

2:00pm

- We suggested to replace a pump at the boiler. Pump was working but it was slow
- picture of the pump was sent to landlord for approval

3:00pm

- We requested to check fireplaces, tenant refused, instead, tenant confirmed that they checked and all fireplaces are in working condition
- We then checked electric heater in basement bathroom, heater is not working.

3:30pm

- We checked boiler again, and made sure the supply and return temperature for the in floor radiant heating system were normal and running properly
- Temperature were up to 66-67 degree F

3:50pm

- We then showed the tenant with the heat sensor which showed the hot water was running in the floor radiant heating system
- We also, gave instructions to the tenant telling them not to switch the heating system on and off, set the temperature at 70 degree F for efficient heat
- temperature were up to 68-69 degree F

4:00pm

- We then left the house.
- It is also important to note that on September 12th when we visited for the same reason, all thermostats were turned off when we arrived, we turned them on, and everything was working well. In addition, on August 25th we serviced the boiler.

Y.C. testified that the above letter and the November Inspection Invoice make it clear that there was indeed something wrong with the primary heating source at the Rental Unit and once it was remedied, everything began functioning as it should.

The Tenants testified that they would like to remain at the Rental Unit as the heating issue is now remedied. They testified that they have not experienced issues since November 15, 2023.

Analysis

The Tenants testified that the heating system has been fully functional since November 15, 2023. Therefore, their application for repairs and provision of services and facilities required by law is dismissed without leave to reapply, because the heating system no longer needs to be repaired and the Rental Unit has heat.

Section 7 of the *Act* states that if a party does not comply with the *Act*, the *Regulations* or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the party who claims compensation must minimize the losses.

The Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the *Act* or the tenancy agreement is due. It states that the applicant must prove that (1) the respondent failed to comply with the *Act* or the tenancy agreement; (2) the applicant suffered a loss resulting from the respondent's noncompliance; (3) the applicant proves the amount of the loss; and (4) that they reasonably minimized the losses suffered.

Pursuant to the Residential Tenancy Branch Rule of Procedure 6.6, 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 the case is on the person making the claim.

I must make two primary findings in this case before engaging in an analysis of damages: (1) whether there was ever an issue with the primary heating system at the Rental Unit, and (2) if there was, did the Landlord remedy these issues in a timely manner.

I agree with the Landlord's counsel that there is no evidence that the Tenants communicated their issues in writing regarding the Rental Unit's primary heating system at any time prior to August. The July Tenant's Report was not given to the Landlord until October 2023. The first written communication to the Landlord's agent regarding the heating system is on August 21, 2023. The Landlord's position at the hearing was that there were no issues with the heating system and when they were informed of possible issues, they were attentive and timely about the matter. As I will explain below, based on the evidence before me and the submission of the parties, I find that the primary heating source was always operable; therefore, even if the Tenants did communicate their grievances about the heating source earlier (despite my finding above that there is no indication from prior to August 2023), my final decision would not change as the heating source was operable.

The July Tenant's Report states that "the radiant floor heating does not seem to work; all thermostats have been turned on for over 5 hours, they all show "heat on", but my infrared thermal camera did not pick up any heat signals. It is recommended to have qualified contractor to further review, confirm the issue, and make repairs".

During the hearing I asked W.D. about the home inspector's attendance at the Rental Unit on July 22, 2023. They testified that the inspector attended at approximately 9:00 AM. They testified that they themselves told the inspector that the thermostats had been on for five hours. In any case, the inspector clearly states that they recommend a qualified contractor to further inspect the primary heating source and confirm whether there are issues. I note that the scope of the home inspection on July 22, 2023, was a complete internal and external home inspection, not just the heating source. The inspectors and contractors hired by the Landlord in September and November provided much more detailed and comprehensive data regarding the primary heating source in the Rental Unit.

The evidence, namely the September Inspection invoice, shows that the Landlord had no indication that there was anything wrong with the heating system (even if I accept the Tenants' position that the pump that was replaced in November 2023 was the source of problems). In September 2023, the inspector states that when they arrived at the Rental Unit, all the thermostats were turned off by the Tenants. The technician then turned on the thermostats and informed the Tenants that it may take up to 24 hours for the Rental Unit to warm up. The technician's notes further state that "Customer was turning on for 4-6 hours and then turning it off because they were not noticing any change in heat." Finally, the technician states that "[f]rom our side of things, the Boiler is producing hot water, and the pump is moving the water. Boiler is cycling on and off at a normal rate, which shows good water movement."

The Landlord therefore had every reason to believe the Tenants were not operating the system properly. During the hearing the Tenants never provided any testimony to dispute the hearsay statements of the technicians. While these invoices are hearsay statements and the technicians were not at the hearing to provide affirmed testimony,

the statements were not disputed. The rules of evidence in tribunal settings is not as strict as the Supreme Court of British Columbia. I have no reason to believe these invoices are fake or that the technicians are anything but neutral third parties as the Landlord's lawyer stated they were. The Tenants did not dispute M.N.'s submissions regarding the technicians being neutral third parties.

Following the events of September 2023, the parties attend arbitration, which results in the Agreement. The Landlord's position at that hearing was the same: the heating system is not faulty.

In November 2023, another technician attends the Rental Unit. The findings of this technician are like those of the technician that attended in September 2023, with the exception that this technician finds the pump that runs hot water throughout the Rental Unit to be running somewhat slowly. The technician's exact statement was: "[p]ump was working but it was slow". Neither in the November Inspection invoice nor in the letter they sent to J.L. the day after the inspection does the inspector conclusively state that the heating system was inoperable or that the pump made a significant difference in the rate in which the Rental Unit was warming up.

In their November 16, 2023, letter, they state that prior to the pump being replaced the Rental Unit was warming up once the technicians turned on all the thermostats.

However, it would be logical to assume that a slow-running pump may have improved the system. Notwithstanding this logical assumption, I find that, on a balance of probabilities, the Tenants were not operating the system as it was designed. This is apparent from the inspectors' invoices and notes.

In short, I find, on a balance of probabilities, that the primary heating system at the Rental Unit was operable prior to November 15, 2023. However, in the alternative, even if I am wrong, the Landlord had no indication prior to that date that there was anything wrong with the system. I make this secondary finding because technician Kyle, in September 2023, clearly states that there is nothing wrong with the system. Therefore, the Landlord could not have addressed the issues prior to that date (notwithstanding my primary finding that the heating system was operable, even if slow). Therefore, even if the system was in need of improvements, as soon as the Landlord received a recommendation to have a part replaced, they were attentive about the matter and replaced the pump immediately.

I note that Policy Guideline 6 provides the following guidance: "[a] landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct

these.” In this case, the Landlord took reasonable steps to fix the pump in the primary heating source as soon as they were recommended to by the technicians.

The Tenants testified that the secondary heating sources were not the real issues, and that the four fireplaces were always functional. I note that the small baseboard heater in the bathroom of the basement was replaced within two days of technician Justin informing the Landlord of its non-functioning state. In addition, the Landlord was attentive and sent a technician in September to inspect the Rental Unit’s heating sources, which, as I have already found, resulted in a clean bill of health.

Thus, as I can find no contravention of the *Act*, I decline to order a retroactive reduction of rent in favour of the Tenants, and I dismiss that portion of their application without leave to reapply. I also dismiss their application, without leave, for an order of compliance pursuant to section 62 of the *Act*. There is no need for such an order.

I also dismiss the balance of their monetary claims for the same reason as above. A claim of compensation under section 7 or 67 requires a finding that the opposing party contravened the *Act* or the tenancy agreement. I can find no such contravention.

The Tenants’ claim for the inspection report fails for other reasons as well. No invoice was submitted. The Tenants testified that the cost of the comprehensive inspection was much higher than the $850.00 claimed. Therefore, $850.00 is what they attribute to the time the inspector spent on the heating elements of the Rental Unit. I find this reasoning incomplete. There is no explanation of how many hours the inspector spent at the Rental Unit, how many hours the inspector spent on checking the primary heating system, what the total cost of the inspection was, and, as I have already explained, as I have found no contravention of the *Act* on the part of the Landlord, they should not be held responsible for the cost of this report.

As the Tenants were unsuccessful, I dismiss their claims for the two filing fees.

I also dismiss the Landlord’s application in full, without leave to reapply. Legal fees cannot be claimed under the *Act*. In addition, the Landlord chose to seek legal counsel as it is their right to do so. This cost, however, cannot be directly associated with any contravention of the *Act* by the Tenants.

Section “4.” of the Agreement states:

4. The landlord is at liberty to request compensation from the tenant for the technician and the representatives’ time at the rental unit should the technician determine the heating sources are operational.

I note that the Agreement simply states that the Landlord is “at liberty” to seek compensation should the technician determine the heating sources are operational. In

this case, I must still determine if the Landlord is owed compensation pursuant to sections 7 and 67 of the *Act*.

I agree with the Tenants' reasoning that J.L. was doing their job by attending the Rental Unit. In addition, the Landlord did not testify what section of the *Act* the Tenants contravened by insisting that the heating system is inoperable. The record indicates that the Tenants were unable to use the system as it was designed. By November 15, 2023, all issues with the heating system, its operation, and confusion surrounding thermostats appear to have been resolved. The Tenants did not raise concerns again.

I do not agree with the Landlord and J.L. that the Tenants were not cooperating. Communication between the parties shows that the W.D. was taking pictures of thermostats, albeit after much persuasion from J.L. The system and its design caused the Tenants frustration, some of which may have been caused by the Landlord and their agent not explaining the system in detail at the start of the tenancy (no testimony was provided regarding this during the hearing).

As I cannot find the Tenants in contravention of the *Act*, I decline to award any damages to the Landlord and I dismiss their claim without leave to reapply, including their claim for the filing fee.

Even if I am wrong in my reasoning above, I find the Agreement somewhat vague. The Agreement states "should the technician determine the heating sources are operational." It does not provide for a situation where improvements are made to the system, such as what happened when the Landlord replaced the pump.

Conclusion

Both parties' applications are dismissed in full, 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 *Act*.

Dated: January 02, 2024

Residential Tenancy Branch