



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for damage to the rental unit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary order for damage to the heating system in the rental unit and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord and the Tenants agree that they have a tenancy agreement that currently requires the Tenant to pay monthly rent of \$960.00.

The Agent for the Landlord and the Tenants agree that this rental unit was left vacant for an extended period in December of 2008 and January of 2009. The parties agree that when the Tenants children returned to the rental unit on January 15, 2009, the heating system was not functioning. The parties agree that the Tenants' adult son, who was not present at the hearing, reported the problem to the Landlord on January 15, 2009.

The Agent for the Landlord stated that a technician from Koala T. Mechanical Systems Ltd. attended the rental unit on January 15, 2009, at which time the technician determined that two radiators in the rental unit had frozen and subsequently malfunctioned. The Landlord submitted a letter from the technician, in which the

technician stated that the tenant told him he had turned off the switch to the boiler, which he speculated cause of the pipes in the heating system to freeze.

The Agent for the Landlord stated that the switch that the technician referred to in his letter turns off the power to the thermostat, which prevented the boiler from turning on during the cold weather.

The male Tenant agreed that he turned off the switch but he contends that the pilot light was still on and that the heating system should have functioned properly during his absence. He contends that the pipes in the heating system froze because of the particularly cold weather, and he argues that he should not be held responsible for the resulting damage.

The Agent for the Landlord agreed that she did speak with the Tenants' son regarding the heating system on January 15, 2009. She stated that she gave the son the following three options in regards to the repairs:

- The Landlord would instruct Koala T. Mechanical Systems Ltd. to repair the heating system immediately but that the Tenants would likely be responsible for any overtime charges that were incurred; or
- The Landlord would instruct Koala T. Mechanical Systems Ltd. to repair the heating system the next day and that the Tenants would likely be responsible for the cost of the repairs; or
- The occupants could hire a technician to repair the hearing system providing they provided the Landlord with proof that they used a licensed plumber who had the appropriate insurance.

The Agent for the Landlord stated that the Tenants' son directed her to have the heating system repaired the following day. She stated that she was not told that the Tenants had a technician on site and that she never prohibited their technician from entering their rental unit.

The Occupant #2 stated that her brother notified the Landlord of the problem shortly after they arrived home. She stated that, due to the delay in repairing the heating system, a friend of her father's contacted a plumber. She stated that the Landlord told the plumber that he could not enter the rental unit and that he could not conduct repairs to the heating system.

The Agent for the Landlord stated that the Landlord hired a heating company to investigate the problem with the heating system, which determined that the two radiators had frozen as a result of the heat being turned off. The heating company repaired two broken base board heaters, for which the Landlord was billed \$1,183.67. The Landlord submitted a bill from the heating company.

The male Tenant stated that the plumber that his friend asked to view the damage has told him that the amount charged by Koala T. Mechanical Systems Ltd. was unreasonable and that he could have made the repairs for significantly less. He stated that the plumber did not provide him with an estimate for the repairs because the Agent for the Landlord would not allow the plumber into the rental unit for the purposes of viewing the damage.

The male Tenant was unable to provide the surname of the plumber nor was he able to provide the name of the company for which the plumber works. The male Tenant asked to call the plumber as a witness. Two attempts were made to contact the plumber at the phone number provided by the Tenants, however the telephone was not answered, nor was an answering machine activated.

The Tenants submitted no documentary evidence from the plumber to corroborate their contention that the fees charged by Koala T. Mechanical Systems Ltd. were excessive.

Analysis

On the basis of the information provided by both parties, I find that the heating system in the rental unit was damaged during this tenancy because the Tenants failed to adequately heat the rental unit during an extended absence. Tenants have a responsibility to ensure that a rental unit is not damaged during their tenancy. This includes keeping the rental unit warm enough to prevent pipes from freezing. In these circumstances, the pipes froze during the winter months when the Tenants knew, or should have known, that the outside temperatures could fall below zero. I find that the Tenants must repair the damage to the heating system, pursuant to section 32(3) of the *Residential Tenancy Act (Act)*.

On the basis of the repair bill from Koala T. Mechanical Systems Ltd., I find that the Landlord paid \$1,183.67 to repair the damage to the heating system. I find that the Tenants submitted insufficient to establish that the bill from Koala T. Mechanical Systems Ltd. is excessive. In reaching this conclusion, I was strongly influenced by the absence of evidence from the plumber who allegedly advised the Tenants that the cost was unreasonable and the absence of a significantly lower estimate for the same repairs.

As the Tenants have failed to establish that the repair bill is excessive, I find that the Tenants are obligated to compensate the Landlord for repairing the furnace, in the amount of \$1,183.67.



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I find the issue of whether they were denied the opportunity to have their own technician repair the damage to the furnace to be moot, since they did not establish that they could have had the damage repaired for significantly less.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,233.67, which is comprised on \$1,183.67 in damages and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$1,233.67. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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 *Residential Tenancy Act*.

Dated: July 06, 2009.

Dispute Resolution Officer