Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RP, PSF, RR, FF

Introduction
This hearing dealt with an application by the tenants for order compelling the landlord to comply with the Act, regulation or tenancy agreement; to make repairs to the rental unit, to provide services or facilities required by law, and to pay the tenants financial compensation for repairs, services or facilities agreed upon but not provided. Both parties appeared and had an opportunity to be heard.

As set out in the Interim Decision at the start of the hearing the tenants advised that all the repairs requested had been made.

Issue(s) to be Decided
Are the tenants entitled to a monetary order and, if so, in what amount?

Background and Evidence
Tenancy Agreements
This tenancy commenced May 13, 2013 as a one year fixed term tenancy. The monthly rent of $2480.00, which is due on the first day of the month, includes all utilities and furniture. The parties say a written tenancy agreement was signed but a copy was not filed in evidence. The tenants paid a security deposit of $1240.00.

A move-in inspection was not conducted at the start of the tenancy. A property manager took over this property on July 1, 2013. A new tenancy agreement – which the parties say was identical to the first agreement – was signed; a move-in inspection was conducted; and a move-in condition inspection report was completed. A copy of the condition inspection report was filed in evidence; a copy of the tenancy agreement was not. A number of repairs that were required were listed on the condition inspection report. Both parties acknowledge that all repairs listed have been completed.

In March of 2014 the tenancy was renewed for another year. A copy of that tenancy agreement was not filed in evidence. The parties say the only change was that the rent was increased to $2580.00 and the tenants paid a pet damage deposit of $1290.00.

Both sides reported that the property owners did not speak English. Before the property manager took over this unit the tenants' contact with the landlords was through the owners' teenage son who acted as the translator in all communications between the tenants and the owners.

Gas Stove

The tenants experienced difficulties with the gas stove from the beginning of their tenancy. They reported the problem to the property owners.

On March 22 a plumbing and heating company attended at the rental unit primarily to attend to certain plumbing issues. The company recommended that a new aerator be installed on the stove. The owners' handyman ordered the aerator and was informed that delivery would be about six weeks.

The tenant testified that they had to turn on all the burners in order to get the oven to ignite. In her written material she stated that in order for the oven to work one of the burners had to also be burning.

On April 11 the tenants smelled gas. They called Fortis who red-tagged the stove. The notice from Fortis said: "Front left burner by passing gas in off position. (100 ppm) – oven not working properly." At the bottom of the notice was the following warning: "DO NOT USE until repairs are made. FortisBC strongly advised that you employ a licenced gas fitter to make the necessary repairs and re-inspect the appliance BEFORE placing it back in service."

The witnesses give different accounts of the events immediately after the stove was red-flagged.

The property manager testified that he has talked to the owners, their son and their handyman about events at this time. He was told that the home owners had arranged to have a certified gas company come to the rental unit on Monday, April 15. However, when the owners and the tenants met on Sunday, April 14 the tenants were very insistent that they did not want to wait for a technician; they needed a new stove immediately. As a result the owners went ahead with the purchase of a new gas stove and cancelled the gas technician. In support of this version of events the property manager referred to a transcript of text messages between the owners' son and the

tenant. The text at 17:15 on April 13 says: “About the oven, my dad is going to find a tech who will check the problem next Monday.”

The tenants deny this version of events. The tenant says they were not told that a gas technician was coming on Monday and they would never have denied access to a qualified gas technician. They were only told that the replacement part could take weeks.

On April 14 the owners ordered a new stove from Sears at a cost of more than $3500.00. The stove was installed about ten days later by the handyman.

At first the stove worked but within a few weeks, the tenants started experiencing the same problem. The tenants notified the property manager who asked the tenants to contact Sears, as the stove was still under warranty. Sears sent someone on two separate occasions. One of the technicians said the regulator had to be replaced. It took about six weeks for the regulator to be delivered and replaced.

On August 29 a second plumbing and heating company looked at the stove. Their invoice says: “Diagnosed PROBLEM with stove – traced back to gas reg by HWT and furnace – Replaced Regulator.”

The tenant testified that during the summer they could not use the oven but they could use the burners. Because it was summer they also used their BBQ.

After the regulator was replaced the stove worked fine for a few weeks; then the oven started shutting off when it reached the designated temperature. On October 30 the tenants notified the property manager that the oven was shutting off and they could smell gas. The property manager agreed that they needed a new stove.

The property manager had considerable difficulty with Sears but a new stove was delivered to the rental unit late in the day on Friday, November 1. The parties then discovered that because the stove was a different model and a different configuration the gas line had to be moved.

The landlords were not able to get a qualified gas company to the rental unit until Monday, November 4. On that day a third plumbing and heating company attended. The tenant described this technician as fabulous.

The landlord filed a letter from this technician as late evidence. As the tenant acknowledged receipt of the letter prior to the hearing and referred to the substance of it

during her oral testimony I have accepted the letter into evidence and have considered it in preparing this decision. The letter explains as follows:

> "Original range was duel fuel and operated on an elevated gas pressure of 56" water column. The original installation was missing an in-line regulator to reduce this pressure to 7" WC. As there was no gas oven this deficiency was not detected and system operated under stress on elevated pressure.
>
> FortisBC attended and red-flagged the range. System was to be re-certified by a licenced contractor. This action would have solved the issue . . .
>
> Subsequent replacement ranges had gas oven and would not operate with the elevated pressure and no installer seemed to understand the issue. This is beyond the control of the property owners.
>
> AF attended, identified and installed the missing regulator and problem was solved. This item should have been installed during initial piping installation and the owner who rely on qualified gas servicemen would not be aware of the missing component."

All parties agree that the stove has worked well since November 4, 2013.

The property manager says that the tenants never gave a copy of the red flag to the him or the property owners, even when it was requested. The tenant says they gave the red flag to the owners when they met on April 14.

The tenants say Fortis told them they would contact the property owners directly and never said anything to them about the need for a re-inspection.

The property manager argues that if the tenants would have waited until April 15 for the qualified gas technician or given the red tag to the owners so they would have known about the requirement for a re-inspection the problem identified by the third plumbing and heating company in November would have been identified and resolved in April.

Heat

The tenants say they experienced difficulty with the furnace from the beginning. They notified the owners who had their handyman look at it a couple of times. He was not successful in fixing the problem. After the property managers took over the tenants again reported the problem. They were told that once the regulator to the stove ws fixed the furnace would correct itself. When AG fixed the stove on November 4 they

also repaired the furnace. They replaced a broken thermostat and cleaned the flame rod. The furnace has worked well since. The tenants say they experienced a cold house in March, April, and October of 2013.

The property manager testified that the handyman told him that the furnace worked fine every time he checked it. When they took over the property and received complaints from the tenants they also checked the furnace. It appeared to work every time they tested it. In August they had the second plumbing and heating company look at the furnace at the same time as they replaced the regulator on the stove. That repairman reported that the furnace seemed to be working fine.

Grass Cutting

For part of this tenancy there was another tenant in the lower level of this house. There was conflict between the tenants about use of the yard and the driveway. Ultimately the downstairs tenant used a portion of the front yard for his own purposes. Then there was conflict about who was responsible for cutting the lawn on that portion of the front yard.

The tenant says there is nothing in the tenancy agreement about grass cutting but they had a verbal agreement with the property manager that they would be reimbursed $50.00 per month for cutting that portion of the lawn.

The property manager says the tenants only gave up a portion of the front yard in September 2013. He says the area in question is about 8 feet by 20 feet. He also testified that in the conversation with the male tenant he told the male tenant he had no authority to authorize a payment of any kind. The male tenant told him it was not a very big deal.

In response the tenant said that the downstairs tenant had used the front yard throughout his tenancy.

Analysis

As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages*, when a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of

an abatement of rent or a monetary award to the portion of the premises or property affected.

I reject the property manager's argument that if the tenants had given them a copy of the red flag earlier a re-inspection would have been conducted and the problem diagnosed and remedied earlier. First of all, the red flag only says that an inspection is required before the existing stove is put back in place. It was not; a new stove was installed. Secondly, there is no guarantee that the person conducting the inspection would have diagnosed the problem. After all the original installation was done by a gas company and it was inspected in August by a gas company; one company did an improper installation and the other never noticed that.

I am not able to find that the landlords had arranged for a gas technician to attend the unit on April 15 but that they cancelled that appointment because of the tenants' insistence on a new stove. The only actual participant in this discussion to testify was the tenant, who denied this allegation. The transcript of the text messages is not the best piece of evidence as it is not an actual picture of the message; it is not a complete record of that part of the conversation; and the transcript does not even present the calls in chronological order. Finally, it is possible that given the technical nature of the issue and the frequently mentioned language difficulties of the landlords, that there may have been some miscommunication. While I have no doubt that the tenants were very forceful in presenting their need for a stove there is not enough evidence for me to find that their intransigence led to the continuation of this problem.

After considering the evidence I do not find that the landlords acted improperly or negligently. They responded within a reasonable time to the complaints about the stove and the furnace. They replaced the stove immediately after it was red-flagged, at considerable expense, and they had three different commercial plumbing and heating companies to the rental unit within an eight month period. It is not the landlords' fault if the first two companies did not diagnose the problem correctly.

However, as explained above, on an application such as this it is not necessary to establish fault in order to establish liability.

Based on the tenant's evidence I find that the stove did not work properly from mid-March to mid-April, July; August, and October – a total of four months. I award the tenants a rent rebated in the amount of 5% - $124.00 – for each of those months; a total of $496.00.

Although I accept the landlord's evidence that they checked the furnace frequently in response to the tenants' complaints the evidence shows that ultimately the furnace and the thermostat did required repair. Accordingly, I award the tenants a rent rebate in the amount of 5% for three months; a total of $372.00.

As explained in *Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises* a tenant who lives in a multi-family unit but who has exclusive use of the yard is responsible for routine yard maintenance, including cutting grass. The landlord is responsible for the routine maintenance of the common or shared areas of a multi-family unit.

On any claim the onus is on the person making the claim to prove it on a balance of probabilities. In this case the only evidence regarding any agreement to compensate the tenants for cutting the grass or even how long the front yard was a shared area is the conflicting oral testimony of the parties. There is no additional evidence to tip the balance of probabilities in the tenants' favour. This claim is dismissed.

Conclusion

I find that the tenants have established a total monetary claim $918.00 comprised of damages of $868.00 as detailed above and the $50.00 fee the tenants paid to file this application. Pursuant to section 72 this amount may be deducted from the next rent payment due to the landlord by the tenants.

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 11, 2014

Residential Tenancy Branch