Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RR O FF

Introduction

This hearing convened on June 28, 2016 for 80 minutes. Each party was given the opportunity to present oral submissions upon which the Landlord was issued oral orders to conduct repairs forthwith. In addition, the Landlord was ordered to submit evidence of the completed repairs prior to the reconvened hearing. The hearing was adjourned to August 22, 2016 at 9:00 a.m. An Interim Decision was issued June 29, 2016 outlining the aforementioned orders as follows:

> *The hearing was adjourned. Notices of reconvened hearing are included with this Interim Decision. The Landlord and the Tenant are advised that if they did not attend the reconvened hearing a decision will be issued in their absence.*
>
> *The Landlord was issued the following oral orders:*
>
> 1) *The Landlord is to have a licensed gas fitter repair the existing (used) natural gas fireplace, located in the Tenant's rental unit, forthwith;*
> 2) *The Landlord is to fax proof of the completed repair, along with a one page cover sheet listing the file number, to fax numbers: 604-660-2363 and 250-356-7296.*
>
> [Reproduced as written p.2 par 2 & 3]

At the commencement of the August 22, 2016 hearing I reminded the parties that their affirmation from June 28, 2016, was still in full force and effect as the August 22nd hearing was a reconvening of the June 28, 2016 hearing. I informed the parties that no additional evidence had been received on file from the Landlord. The Landlord confirmed he had not submitted additional evidence as ordered and he had not conducted the repairs as ordered.

The Landlord then requested that a different arbitrator be assigned to this matter. I asked the Landlord on what grounds he was seeking a different arbitrator; to which he responded he would not tell me. I then reminded the Landlord that this proceeding began on June 28, 2016 and as I had heard the previous submissions of evidence and had issued orders I was now seized of these matters.

The Landlord responded saying he would only provide his reasons why he was requesting a different arbitrator in writing to the person who had authority to decide upon his request. I explained to the Landlord that in absence of any reason to request a

different arbitrator, I would be continuing with the scheduled hearing. The Landlord argued that there should be someone else in authority who would decide if a different arbitrator would be assigned and that decision should not be made by me.

I asked the Landlord if he had contacted anyone at the Residential Tenancy Branch since the June 28, 2016 hearing and prior to this August 22nd, 2016 hearing, to request a different arbitrator. The Landlord stated he had not made any attempts to request a different arbitrator until attending at this August 22, 2016 hearing. I then asked the Landlord again if he had a reason(s) why a different arbitrator should be conducting the hearing. He responded a second time saying he would only put his reasons in writing to someone other than me. The Landlord then argued that if I was the person who decided if a different arbitrator would be assigned to hear these matters and if I continued the hearing I would then be biased.

When I asked the Landlord how I would be biased if I proceeded to hear these matters, he responded “I don’t think it matters”. He then stated that I would be biased if I refused to allow this matter be assigned to a new arbitrator. He argued that someone other than me should be the person to decide if a new arbitrator would be assigned. When I asked why, he stated “I am not prepared to speak with you today.”

The Tenant was given the opportunity to speak to the Landlord’s requests to have these matters assigned to a different arbitrator. She testified she wished to proceed today and that she received a letter dated July 31, 2016 from a new property management company (as listed on the front page of this Decision) advising her that the rental property was in foreclosure. She stated she contacted the new property manager and was told that effective September 1, 2016 she was required to pay her rent to the new property management company. She indicated the fireplace/heater has not been repaired as previously ordered. She said she had a company on standby to do the repairs and was willing to pay for the repairs if she would be allowed to deduct the cost off of her rent. She asserted it was starting to get cold in their area and she was concerned the repairs would not be completed prior to the winter months if she did not act quickly.

I asked the Landlord if his request for a new arbitrator was in relation to the foreclosure information submitted by the Tenant. He stated no and asked if this hearing was being voice recorded. I explained that hearings were not recorded. He then stated he would not be telling me the grounds for his request or anything else. I explained that a reason(s) must be given when a request for a different arbitrator is made. The Landlord then stated that he had reviewed his notes from the previous hearing and he felt a new arbitrator should be assigned.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

After consideration of the submissions from both parties; the fact these issues involved emergency repairs to the main source of heat in the rental unit; and in consideration that

fall weather was approaching; I explained the following to both parties: I was an independent decision maker seized of these matters since the hearing evidence and issuing orders on June 28, 2016. It is not enough to simply request a different arbitrator without a reason or evidence to support the request and then allege bias when that request is denied. If that were the case, matters would never been completed as respondents would simply continue to request new arbitrators hear the matters which would defeat the administrative law process of providing participants with a fair, impartial, expedient decision.

In absence of any reason or evidence as to why this matter should be reassigned to a different arbitrator, or a reason that would support the allegation of the presence of bias, other than the argument that I was the person who decided if the matter would be reassigned, I find pursuant to section 62 of the *Act,* it would prejudice the Tenant if I were to grant the Landlord's request to have a different arbitrator hear these matters. As such, I informed the parties I would be continuing the hearing as scheduled and would be issuing a final decision.

I informed the parties of their forms of recourse; whereby if they had evidence that I erred in the interpretation of the law or if my decision was patently unreasonable they could file for judicial review in Supreme Court.

I then turned the floor to the Tenant to hear her final submissions. When the Tenant began her submissions it the Landlord disconnected from the hearing which was at 9:17 a.m. I continued to hear the Tenant's undisputed submissions for an additional 48 minutes, in absence of the Landlord.

Issue(s) to be Decided

1) Has the natural gas fireplace/standalone heat source been repaired as ordered?
2) Has the Tenant proven entitlement to monetary compensation for lost wages, stress, slander, and loss of credibility?
3) Is the Tenant entitled to reimbursement for repairs to the natural gas fireplace/ standalone heat source?
4) Has the Tenant withdrawn her request for compensation for increased hydro costs?
5) Does the Tenant have the authority to deduct the costs to have the heat source repaired/replaced from her future rent?

Background and Evidence

The parties entered into a written month to month tenancy agreement which began in June 2007. Rent was initially $1,200.00 payable on the first of each month and has subsequently been increased to $1,226.40 per month. In June 2007 the Tenant paid $600.00 as the security deposit plus $600.00 for the pet deposit. Rent included the cost of natural gas and lawn maintenance / cutting.

The rental unit was described as being one side of a duplex and is approximately 500 square feet. The duplex consisted of 2 bedrooms, 1 bathroom, living room, eating area, and kitchen. The duplex was built in either the 1950's or 1960's with the original main source of heat being a natural gas wall heater located in the center (living room) of the duplex. The stove/oven is also operated by natural gas.

In July 2014 the existing natural gas wall heater broke down and in September 2014 the Landlord and another person replaced i with a used standalone natural gas fireplace/ heater. The replacement fireplace/heater has the appearance of being a wood fireplace; however it is a natural gas heat unit.

The Tenant testified she was seeking monetary compensation due to lack of and/or improper repairs of the replacement fireplace/heater. She submitted evidence that the replacement fireplace/heater stopped working during the winter of 2014/2015, shortly after it was installed by the Landlord. She stated the Landlord provided her with portable space heaters instead of hiring a contractor to repair the fireplace/heater. The Tenant submitted evidence that the portable space heaters were not providing an adequate amount of heat, they almost started an electrical fire, and caused her hydro bills to increase.

The Tenant asserted that when the Landlord failed to conduct the required repairs she hired a licensed gas fitter to repair the fireplace/heater. The Tenant stated that the Landlord paid the first repair bill and then told her he would not pay any more bills to have the fireplace/heater repaired. The Tenant submitted evidence that on September 28, 2015 she paid for repairs to the fireplace/heater of $239.54 and again on October 9, 2015 in the amount of $333.81.

The Tenant submitted evidence that the natural gas had been shut off for a period of approximately one week during July 2015. She stated she called the Landlord about the disconnection and the natural gas was reconnected a few days later. She submitted that she was not able to use her stove during that time so she now sought compensation in the amount of $350.00. The Tenant stated she determined that amount by using the Government per diem daily rate for meals at approximately $50.00 per day. The Tenant stated she did not ask the Landlord for compensation when the gas was turned off back in 2015. She stated she thought that now that she had made an application to have the fireplace/furnace repairs she would seek compensation for everything that has occurred.

The Tenant stated that she was also seeking $1,600.00 for lost wages and $1,000.00 for stress, slander, and loss of credibility which resulted from multiple major life stressors in her life, as supported by her doctor's note. She asserted those stressors included having an aging and ill pet, issues resulting from lack of sleep caused by inadequate heat, and having to use space heaters. The Tenant asserted the Landlord responded to her repair requests with slanderous statements in his emails. She argued she lost her credibility with a client at work when she made an error after having inadequate sleep.

Upon review of the Tenant's request for compensation for increased hydro costs, the Tenant testified she was withdrawing that request. The Tenant submitted arguments that portable space heaters were not designed to heat an entire house fulltime. She submitted evidence that the electrical breakers kept "blowing" off, the extension cords began hot, and one extension cord started a small fire. She is seeking to have the heating system repaired as soon as possible before the weather gets cold.

The Tenant wrote "Schedule A" as item #9 on the Monetary Order Worksheet. She stated she submitted a list of maintenance and repair items that she wished to have decided upon in this Decision. Upon further clarification the Tenant indicated that she had not put these requests in writing to the Landlord prior to filing her application for Dispute Resolution. At that point I explained to the Tenant that I would dismissing her submissions for additional repairs/maintenance, with leave to reapply, as the *Act* requires a tenant to put their requests in writing and a tenant must allow the landlord a reasonable amount of time to conduct the repairs/maintenance prior to filing an application.

The Landlord testified the Tenant's doctor's note states the Tenant has multiple major life stressors. He argued the Tenant claimed she has no heat in the house; however, when the heat system broke he said he gave the Tenant electric heaters. Upon further clarification the Landlord confirmed he provided the Tenant with portable space heaters.

The Landlord submitted he and his contractor removed the tall, old, pre-existing natural gas wall heater. He asserted that he had been placed on a wait list for two months waiting for someone to come and hook up the used fireplace/heater that he had purchased. He argued that contractors in their city do not do small jobs as they are primarily doing work at the large developments. The Landlord stated that when the Tenant told him she hired a contractor he thought the price was too high and he told the Tenant he would not pay the bills. He did pay the first bill which was approximately $900.00 and he refused to pay the remaining bills. The Landlord argued the problems with the fireplace/heater were operator error. He then stated he had no problems paying the two previous repair bills submitted by the Tenant.

The Landlord confirmed the natural gas had been turned off for several days in July 2015. He asserted he turns the natural gas off every year in the summer. He then confirmed the stove/oven and furnace in the rental unit operate with natural gas.

During the August 22, 2016 hearing, the Tenant reviewed her email submissions and noted how the Landlord wrote conflicting statements in the emails where he would attempt to make the situation look like it was the Tenant's problem. She noted how he commented about not coming to town and then would say she was refusing him access and the ability to repair the furnace, when in fact he simply did not come to town. She noted how he said the furnace problems were operator error and then he paid to fix the problem that existed all along. In addition, there was evidence where the Landlord said he had hired a contractor to do some work and later confirmed he had the work himself.

She pointed out other inconsistencies in his responses to her requests for repairs and submitted that she always provided access. She confirmed she had requested that he give her the required 24 hour notice though.

The Tenant argued that she had her contractor conduct an inspection on the existing fireplace/heater just prior to the August 22, 2016 hearing. She said he told her the broken piece could no longer be purchased and that the entire fireplace had to be replaced at a cost of $3,400.00 plus tax. The Tenant confirmed that despite the current foreclosure proceedings she was prepared to pay to have the furnace/fireplace repaired/replaced if she could deduct the amounts from her rent.

In closing, the Tenant testified that she had informed the new property management company about her application for Dispute Resolution. She stated she would inform them of the outcome and any orders that may affect her monthly rent payment.

Prior to completion of the hearing; after consideration that cooler fall weather is fast approaching in her area; and considering the Landlord failed to comply with my previous orders issued June 28, 2016; I issued the Tenant an oral order as follows:

> *I hereby authorize the Tenant to hire a licensed natural gas contractor to conduct emergency repairs in order to provide/restore an adequate source of heat to the rental unit, in the most economical fashion. The Tenant must serve the Landlord and property manager a copy of the receipt. The cost of those repairs may be deducted from the Tenant's future rent payments until such time as the repair costs have been recovered in full by the Tenant.*

I cautioned the Tenant that she must enact the most cost efficient manner of repair. For example, if the required part was obsolete and could not be purchased; the must clarify if the part could be manufactured at a lesser cost than replacing the entire fireplace/heater. In addition, I informed the Tenant that she must have the contractor provide her a written statement that would confirm whether the required part(s) could be obtained or manufactured and which was the most economical route that could restore the main source of heat to the rental unit. That documentation must be served to the Landlord and the new property management company by the Tenant.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this *Act* applies.

Section 33(1)(c)(iii) of the *Act* defines emergency repairs and includes repair that are required to the primary heating system.
Section 33(3) of the *Act* stipulates that a tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;
(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33 (5) of the *Act* provides a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Section 33(7) of the *Act* stipulates that if a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

As per the undisputed evidence from the Tenant, I find the Landlord has breached sections 32 and 62 of the *Act* by failing to reimburse the Tenant for the two previous

repairs to the heating system of $239.54 and $333.81. Accordingly, I grant the Tenant's application for those amounts for a total award for previous emergency repairs in the amount of **$573.35** ($239.54 + $333.81), pursuant to section 67 of the *Act.*

In addition, I find the Landlord has breached my previous Orders for repairs issued June 28, 2016 and recorded in my June 29, 2016 Interim Decision, as he has failed to enact repairs to the current fireplace/heating system. Accordingly, I granted the Tenant's request to enact emergency repairs as stipulated above. The Tenant must serve the Landlord and property manager a copy of the receipt proving payment repairs prior to the Tenant making deductions from her future rent payments.

In response to the Tenant's claims for $1,600.00 lost wages and $1,000.00 for stress, slander, and loss of credibility, I find there was insufficient evidence to prove either claim related to a claim denominated by the *Residential Tenancy Act (*the *Act)*. Specifically, there was insufficient evidence the Tenant lost wages simply due to the lack of heat in the rental unit; rather, by her own evidence submissions there were multiple life stressors in her life which caused her to be away from work. Furthermore, the *Act* does not provide for punitive damages such as for slander and loss of credibility. Accordingly, the Tenant's request for $1,600.00 and $1,000.00 respectively are hereby dismissed, without leave to reapply.

Regarding the claim of $350.00 for loss of ability to cook I do not accept the Landlord's submission that he had the natural gas turned off every year. That being said, I find the Tenant submitted insufficient evidence to prove the value of the amount claimed or prove the Tenant mitigated any loss as required by section 7 of the *Act*. I make this finding in part based on the Tenant's own submission that at no time did she raise her concern with the Landlord about her inability to cook when the natural gas was turned off in 2015; she simply called the Landlord and informed him it had been turned off. Furthermore, there was insufficient evidence of the exact number of days the natural gas had been turned off in 2015. While I accept the natural gas had been turned off for some period of time there was no evidence that the Tenant was unable to cook her meal either by barbeque or microwave during that time. Accordingly, the claim of $350.00 is dismissed, without leave to reapply.

The Tenant withdrew her request for compensation for increased hydro costs.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **$50.00**, pursuant to section 72(1) of the Act.

The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce their rent payments by any amount the director orders a

landlord to pay to a tenant, which in these circumstances is **$623.35** ($573.35 + $50.00) **plus** the cost to repair the current fireplace/heater.

The Tenant has been issued a Monetary Order in the amount of $623.35. In the event this tenancy ends prior to the Tenant deducting the full award of $623.35 from her future rent payments she is at liberty to serve the Landlord with the Monetary Order, which may be enforced through Small Claims Court.

In addition, if this tenancy ends prior to the Tenant deducting the full amount of the fireplace/heater repair from her future rent payments she will be at liberty to file another application for Dispute Resolution to seek a Monetary Order for any balance owed to her. I caution the Tenant that she would be required to submit sufficient evidence to support any future applications, which may include this Decision.

Conclusion

The Tenant was partially successful with her application and was granted monetary compensation in the amount of $623.35; an order authorizing the Tenant to have the current fireplace/heater repaired; and an order for the Tenant to deduct the cost of that repair from her future rent payments.

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: August 22, 2016

Residential Tenancy Branch