Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order for emergency repairs and to recover the cost of their filing fee.

The Tenants and the Landlords appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenants said they served the Landlords with the Notice of Hearing documents and their evidence via three emails on December 8, 2021. The Landlords said that they received one email, which was lengthy and contained the Notice of Hearing documents and photographs. The Landlords said they sent their evidence to the Tenants via registered mail on December 16, 2021; however, the Landlords said that the Tenants rejected their registered mail delivery. The Tenants confirmed that they rejected the registered mail package, because the notice card did not have a return address on it, so, they did not know who had sent it. Further, they said that it was addressed to the residential address, but not to the Tenants, themselves. They said they thought it might be for to the now deceased owner.

I find that the Landlords served the Tenants with their evidence in compliance with section 88 of the Act, having sent it by registered mail on December 16, 2021. The Landlords provided a tracking number and upon checking the Canada Post tracking guide, I confirmed that the Tenants had refused to accept the package on December 21, 2021 at 2:06 p.m. According to Residential Tenancy Branch Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up, receipt continues to

be deemed to have occurred on the fifth day after mailing." Accordingly, I find the Landlords served their evidence to the Tenants on December 21, 2021, five days after it was mailed, pursuant to section 90. After this discussion, I advised the Parties to let me know if the other Party addresses a document they had not received. No one so advised me in the hearing.

Preliminary and Procedural Matters

The Tenants provided their email address in the Application, and they confirmed it in the hearing. The Landlords provided their email address in the hearing. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party in this way.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the Landlords be ordered to make emergency repairs, and if so, which ones?
- Are the Tenants entitled to recovery of their $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began on July 1, 2021, with a monthly rent of $3,000.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of $1,500.00, and a pet damage deposit of $1,500.00.

During the hearing, the Parties explained that the Landlords had recently purchased the residential property from the Tenants' former landlord. There was also a property management company managing the tenancy for the prior landlord ("Property Managers"), but not the current Landlords. The Tenants assert that this company made errors in the tenancy agreement. First, the initial monthly rent in the tenancy agreement was $3,200.00, but the Property Managers agreed that they had erred, and they sent the Tenants a revised tenancy agreement for $3,000.00. However, the Tenants said that this tenancy agreement was also in error, as it did not note that furnace was included in the monthly rent. I note, though, that this is the tenancy agreement that they

signed. Having reviewed these two agreements, I note that the original tenancy agreement indicated that the furnace was included in the rent. In the second, "corrected" version, the furnace is not included in the monthly rent.

The Tenants submitted a copy of a letter dated December 23, 2021, from the Property Managers ("Letter"), in which the Tenants say the Property Managers acknowledged these errors. However, the Tenants submitted the Letter to the RTB two days prior to the hearing. Further, the Landlords said they received an email with a screen shot of the Letter the day before the hearing. This does not meet the timing requirements of service by applicants in the Rules. The Tenants said that the Property Management office was closed over the holiday break, and so they could not get the Letter any sooner.

The Tenants applied for this hearing on an expedited basis. Accordingly, Rule 10 applies to this situation. The relevant Rules state:

> **10.2 Applicant's evidence for an expedited hearing**
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> An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution.
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> **10.6 Late evidence**
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> If a piece of evidence is not available when the applicant or respondent submits and serves their evidence, the arbitrator will apply Rule 3.17.
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> **3.17 Consideration of new and relevant evidence**
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> Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.
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> The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. . . .

When I asked the Landlords if they had received the Letter, they commented on the

contents of the letter, indicating that they had reviewed it. They noted that the Property Managers' last statement was: "The furnace quit working right at the completion date of the sale. There was no time for us to arrange repair of the furnace as the new owner had taken ownership." As this contradicts the Tenants' affirmed testimony noted below, which I find to be credible, I find that the Letter is of limited reliability and credibility.

We moved on from the topic of service, and I asked the Tenants to explain their claim for emergency repairs. They said:

> Basically heat. Security is a concern, too, as there are doors that we cannot lock, so they are left unlocked, but closed, but heat is the major issue. We have a fire place in the living room, but no heat in the bedrooms or bathrooms.
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> It was supposed to include the heat, but they made mistakes in the rent amount and in the second one they didn't check off the heat. We would never rent a place without heat. We didn't have a very long time to review the agreements; we went to our cabin in the Okanagan in June.

The Landlords said:

> Basically, [the Property Manager] says the furnace quit on the day we took possession, so I have an email from [the Tenant] at 3:58 a.m. on the date we took possession. This is less than four hours from possession, as we had possession at noon. [The Property Managers] said the furnace happened to quit on the day that we took possession. We sent a technician within a week, and it took them a week for a quote. We have a furnace on order that's due in couple weeks.
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> [The Tenant] said [the Property Managers] had sent a technician to look at the bathroom heater and the furnace. We sent [C.] Heating to look and give a quote on a furnace. We hesitated for a couple days. We asked where we could get one sooner. [The Town] was flooded. We couldn't go to the place. We have the furnace on order, and this is all in a month.

I asked the Tenants what they had used for heat so far, and they said:

> We have borrowed heaters from residents in the area. We have been without heat since October. It hasn't worked the whole time we've been here. We didn't need it until October. When it got colder, we discovered it was not working.

> Our Hydro has gone up, and we would like space heaters until the furnace arrives. We have three bedrooms and a den, and there's no heat in any of those rooms. Four heaters would be sufficient.

The Landlords said:

> I just want to point out in the tenancy agreement the furnace was not ticked off. We have ordered a new furnace as fast as we could. If they could find one quicker, we would have done it, but we didn't get any response from them.
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> [The Town] is a community of 144 cottages; it was never designed to spend the winter there. I have an ex-employee who lived there for the last few years, so I know the situation. The cabin was not designed to have heaters in each room. The rooms are too small for a bed and a heater. It would be a fire hazard.
>
> We bought this place, and we've been in it for 15 minutes; they know way more of this place than we do. We only have the photos from [the Property Managers].

The Tenants responded:

> The rooms are – there's a large main bedroom and *en suite* bathroom. The fireplace is approximately 60 feet away from all the bedrooms. The furnace is between the three bedrooms, so the furnace would heat all the rooms, but it's not working.

I asked the Tenants where they are using the space heaters currently, and they said: "In the living room in the day and the bedroom at night. We haven't had heat since late October. Obviously, there's been a cold snap, and it's been very, very harsh without universal heat.

The Landlords said: "I'd also like to point out, the tenancy agreement that we got from [the Tenants] on point 30 – the furnace and the fire place are not even checked off [as being included in the monthly rent]".

The Tenants said:

> This company did this at this time. We had no control over it. When we were phoned, they quoted $3,200.00; 'No,' we said, 'It's supposed to be $3,000.00'. It is a total mistake of the rental company. We never agreed to that. We couldn't find a property to even rent. We got it six days before we moved. We were at the

> hands of the company. It is a total mistake on their behalf. We didn't negotiate a lower rent because of the heat. They didn't buy the property until October and they had no inspection of it.

The Landlords said:

> We uploaded two different tenancy agreements: one in June with $3,200.00 for rent, and the other on June 28 with the $3,000.00 rent, and it didn't include a furnace. So, I mean, to me it appears that they got a reduction in rent because they got a reduction in what's included in rent, and they didn't care, because it was summer. We just accepted the second agreement at the lower rate; we did it in good will. We just took the second agreement from the [Tenants].

I offered the Parties a last opportunity to make statements at the end of the hearing, and the Tenants said the following:

> The fact that heat is a necessity and we have gotten sick, and we have animals and our children. This was a total mistake on [the Property Managers'] behalf. You can't leave a gas fire place on when we go out; it's not safe. So, when we come back home it is very cold. It is a necessity. It was a total mistake on [the Property Managers'] behalf. The Landlords didn't know . . . there was no inspection; they were only in the house for 15 minutes total. We just want heat. It's a comfort thing that's a necessity. I called [C.] Heating and they said [the furnace would arrive] possibly in February. It's not appropriate. It's against the rights of a human being not to have heat.

The Landlords' last statement was as follows:

> When they did bring up the heat issue on the day of possession, we did talk about – offer to let them get out of the lease - and would have paid them $1,000.00 a month early if they left. We're out 1,600 bucks, because we had a lease for $3,200.00. Everyone's heat is expensive this year. . . the furnace is on order. [They have] called … to confirm that. They rejected our evidence … I don't know what else to do.

The Landlords submitted evidence of a voicemail left by the Tenant, S.S. I find this voicemail to be belligerent and unhelpful to the situation. Further the Landlords submitted a copy of the Tenants' December 2021 rent payment in which the Tenant addressed the Landlords as: "Hi [Landlords] Fuck, [S.S.] sent you $3,000.00 (CAD)".

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 33 of the Act sets out what "emergency repairs" means. It says that emergency repairs are "urgent, necessary for the health or safety of anyone or for the preservation or use of residential property." The Act also states that emergency repairs are made for the purpose of repairing:

> (i) major leaks in pipes or the roof,
> (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
> (iii) the primary heating system,
> (iv) damaged or defective locks that give access to a rental unit,
> (v) the electrical systems, or
> (vi) in prescribed circumstances, a rental unit or residential property.

Landlords' and tenants' rights and obligations for repairs are also set out in sections 32 of the Act. Section 32 states:

> **Landlord and tenant obligations to repair and maintain**
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> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. .
>
> **. . .**
>
> [emphasis added]

When I consider all the evidence before me overall, I find that the Landlords did the right thing in having a technician investigate the furnace problems immediately upon being alerted to the problem. When it could not be repaired, the Landlords immediately ordered a new furnace. Unfortunately, this type of appliance takes five to seven weeks to deliver, especially considering supply chain hold-ups being encountered due to the pandemic. The Tenants indicated that they have borrowed two space heaters to assist the gas fireplace with heating the rental unit.

The Tenants signed a tenancy agreement with an erroneous rent amount. One can infer that they failed to read what they signed; the Tenants had even initialed the page with the error in the rental amount. Their Property Manager at the time acknowledged the error and provided a revised agreement. The Tenants were provided with a second tenancy agreement to sign and initial, which they did; however, again, it appears that they failed to review it before signing, as in this agreement, heat was not included in the rent. They say they were in rush at the time to get to their other cabin at the time; however, being in a rush is not an excuse for failing to read a contractual agreement that a person signs. A Party is responsible for what they sign under the law of contract.

The Tenants referred to the Letter as evidence of the error with the furnace not being included in the rent in the second tenancy agreement. However, the Letter contains other clearly false information, which I have found renders it of limited reliability and credibility. As such, I find that any statement regarding the furnace in the Letter to be of limited reliability and usefulness.

Further, there is evidence before me that the residential property is not suitable for year-round accommodation; however, the Tenants decided to move in, anyway. I, therefore, find that they have some culpability in the situation in which they find themselves. In addition, the undisputed evidence before me is that the Landlords acted quickly and earnestly to resolve the furnace malfunction as soon as they were alerted to the problem. The furnace has been ordered and is weeks away from being delivered and installed.

The Landlords expressed concern about using space heaters in the very small bedrooms of the rental unit, which they say is not intended for year-round use. I find that using any additional space heaters could put the Tenants in jeopardy from fire, and therefore, I decline to Order the Landlords to provide any such appliances.

Based on the evidence before me overall, I find that the Landlords have not breached their duty to the Tenants, given that the furnace is not included in the corrected tenancy agreement that the Tenants initialled and signed. Despite this, the Landlords stepped up and purchased a new furnace when their efforts to have it repaired were unsuccessful.

As the fully executed tenancy agreement states that heat is the Tenants' responsibility, I find that the Landlords went beyond the call of duty in this situation and should be commended for their efforts. This is despite hostile voicemails and messages from the Tenant in this regard.

As the Tenants are unsuccessful in this Application, I decline to award them with recovery of the $100.00 Application filing fee. The Tenants claims are dismissed without leave to reapply.

Conclusion

The Tenants are unsuccessful in their Application for emergency repairs, as I have found that the Landlords have not breached the Act, given their efforts to replace the furnace as soon as possible, which is not their responsibility according to the tenancy agreement signed and initialed by the Tenants. Given their lack of success in this matter, I decline to award the Tenants with recovery of the $100.00 Application filing fee.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 07, 2022

Residential Tenancy Branch