



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under the Act, regulation or tenancy agreement. Both the tenant and the landlord appeared in the teleconference hearing.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation in the amounts claimed?

Background and Evidence

The tenancy began in June, 2006 with monthly rent in the amount of \$2000 plus 75 percent of the utilities. Clauses in the tenancy agreement set out that the tenant is responsible for yard maintenance and that the tenant will inform the landlord in writing if the tenancy agreement is not being followed. During the tenancy, the basement suite in the same house was occupied primarily by the owners' son, but other persons also resided in the basement suite on some occasions. The tenant moved out of the rental unit on November 26, 2008.

The tenant has applied for monetary compensation for several problems during the tenancy that he felt the landlord did not properly address, as follows: (1) \$100 for half the cost of gardening bills that should have been split with the basement tenant; (2) \$966.82 for overpayment of utilities, which the tenant feels ought to have been more fairly split as 65% - 35% for the duration of the tenancy; (3) \$1955 for 40% overpayment of heating costs, because the house was poorly insulated and there were problems with

the boiler system; (4) \$3600 for loss of use of 2 of the 5 bedrooms for nine months, as they were not heated and unlivable during the winter months; and (5) \$400 for loss of use of the master ensuite bath for eight months from March to October 2008. The tenant admitted in the hearing that he did not give the landlord written notice of any of the problems during the tenancy because he did not want to poison the relationship with landlord, and it was easier to apply for all the compensation at once.

The response of the landlord was as follows. The tenant should not be entitled to any of the amounts claimed because he did not comply with the tenancy agreement and bring any problems to the landlord's attention in writing in a timely fashion. The tenant did not take reasonable steps to minimize the loss. In response to each of the tenant's claims, the landlord responded as follows: (1) the tenant was required under the tenancy agreement to carry out yard work; (2) the landlord and tenant agreed at the outset on the rate of utilities, and as the tenant is a lawyer he understands the nature of such an agreement; (3) the heating costs were not unreasonable for the size and age of the house, as compared to another house of the same approximate age in the same neighbourhood; (4) the tenant did not properly bring to the landlord's attention the issue of heating in the # bedrooms, and while those # rooms are cooler than other parts of the house they do have heat; and (5) the tenant told the landlord not to worry about the leak from the master ensuite bath, as no one was using the ensuite and there was no urgency. The landlord's position was that the tenant had failed to substantiate his claim on this application.

Analysis

On considering the documentary and testimonial evidence, I find that the tenant's application cannot succeed. The tenant did not comply with the tenancy agreement and properly bring problems to the landlord's attention in writing; nor did the tenant address any problems in a timely manner. The tenant agreed at the outset of the tenancy that the tenant would be responsible for yard maintenance, and that the tenant would pay 75 percent of the heating costs.

Conclusion

The tenant's application is dismissed. The tenant is not entitled to recovery of the filing fee for the cost of the application.

Dated: December 1, 2008