

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *O, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order to recover the funds paid to the landlord prior to moving into the rental unit and to recover the filing fee.

The tenant stated that the notice of hearing dated March 16, 2009, was served on the landlord on March 21, 2009, by registered mail. Despite having been served the notice of hearing, the landlord did not show up for the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the tenant entitled to a monetary order for a refund of payments made to the landlord prior to the start of the tenancy? Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenant testified that she found an advertisement on Craig's list regarding the availability of a two bedroom house located close to a city that she intended to move to, from out of Province. The tenant and landlord communicated by email and telephone and on January 09, 2009 they entered into a fixed term tenancy agreement. The tenancy was to start on February 01, 2009 for a fixed term ending June 30, 2009. The monthly rent was \$800.00 payable on the first of each month.

The tenant was required to pay rent for the first and last month upon signing the tenancy agreement. One of the terms of the agreement stated that the landlord would pay the hydro and telephone bills, subject to the tenant's usage. The tenant paid \$1,600.00 by internet bank transfer, in two instalments of \$800.00 each.

Upon arrival, on February 03, 2009, the tenant found water pouring from the upper level of the unit into the living space below. The unit was flooded and unfit to move into. In addition, the tenant found garbage and debris in the kitchen cabinets, a dirty stove and dirty carpets. There was no heating in the home other than a wood stove which was not in operation. In the absence of heating, the water pipes froze and resulted in flooding and extensive water damage to the unit. There was also no telephone service to the unit as promised by the landlord.

The landlord offered alternative accommodation to the tenant for the night of February 03, 2009 and even offered to let the tenants move into the landlord's home for the length of time that it would take to fix the problem. The tenant stayed the night of February 03, 2009 and then decided to look for alternative housing as according to the tenant, the rental unit did not meet the health, safety and housing standards of the *Residential Tenancy Act*.

The tenants found another place to rent and moved out of the alternative accommodation provided by the landlord, on February 04, 2009. Prior to moving their belongings out, they spoke with the landlord who agreed to refund their money, but requested the option of doing so in installments. The tenant agreed to meet with the landlord on February 16, 2009, to discuss the terms of the arrangement to return the funds to the tenant.

However, the landlord showed up for the meeting with friends, gave the tenant her mail and avoided discussing the issue at hand. The tenants made several phone calls and left messages for the landlord to follow up, but the landlord did not return the phone calls. On February 25, 2009 the tenant sent a letter by registered mail to the landlord requesting the return of the funds that he was holding. The landlord did not respond.

The tenant is applying for the return of \$1,600.00 plus \$50.00 for the filing fee. The tenant has filed evidence to support her case which includes a copy of the fixed term agreement, verification of payment made to the landlord, registered mail tracking numbers and a copy of the letter to the landlord, dated February 25, 2009.

Analysis

Section 32 of the *Residential Tenancy Act* states that a landlord must provide and 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.

Based on the evidence of the tenant and in the absence of any contradictory evidence from the landlord, I find that the rental unit was water damaged, did not have adequate heating or water supply, had a dirty stove and carpet and therefore was in a condition that was not suitable for occupation. The landlord also did not provide a telephone service to the unit as agreed upon in the tenancy agreement.

I find that the landlord breached the terms of the tenancy agreement and did not provide essential services like water supply, adequate heating and telephone service.

Therefore the tenant is entitled to a refund of the rent paid to the landlord. The tenant has proven her case and is entitled to the recovery of the filing fee in the amount of \$50.00 and has established a total claim of \$1,650.00.

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for the amount of \$1,650.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,650.00**.

Dated June 30, 2009.

Dispute Resolution Officer