



Dispute Resolution Services

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

Decision

Dispute Codes: MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as requested?

Background and Evidence

The parties agreed that the tenancy began on October 16, 2008 and was set for a fixed term of one year, to expire on October 31, 2009. A copy of the tenancy agreement was entered into evidence and showed that rent was set at \$1,100.00 per month and did not include water or heat. The tenant paid a \$550.00 security deposit.

The rental unit is heated by propane and at the beginning of the tenancy, the landlord added \$400.00 worth of propane into the propane tank. An addendum to the tenancy agreement provides that the tenant must “replace \$400.00 of propane at the end of tenancy.”

The landlord testified that water to the rental unit is supplied via a cistern which was installed shortly before the beginning of the tenancy. The cistern should be topped up by the well, but during the winter the cistern froze and the tenant was left without water. The landlord testified that the tenant was without water for approximately 7 days in December and had water during the rest of the tenancy. The tenant testified that she was without water from December 15 – 24, December 25 – January 6 and from February 6 – 28. The landlord testified that she arranged for water to be trucked in to fill the cistern on two occasions in December.

The parties exchanged messages via their Facebook pages and supplied copies of their correspondence. The email exchange shows that at the end of January, the tenant complained that the heating costs were excessive, far beyond the amount the landlord had said they had paid to heat the rental unit when they lived there themselves. The parties discussed the heating costs at some length in their emails and eventually came to an agreement that the rent would be lowered from \$1,100.00 per month to \$850.00 per month for two months to assist the tenant in paying for propane.

In early February the parties communicated via telephone at which time the tenant told the landlord either that she did not have any water or did not have sufficient water. The landlord told the tenant that the tenant should arrange to have water trucked in to fill the cistern at her own expense. On February 10 the tenant wrote to the landlord to say that she had received advice from the Residential Tenancy Branch that because she had “been supplied with insufficient water facilities” she could break her lease with 30 days notice. In that message, the tenant gave notice that she would be vacating the unit on March 31. The landlord responded the same day by email and stated that because the rent had been lowered by \$250.00 per month, the tenant should use that money to pay for water. The tenant wrote to the landlord on February 23 advising that she would be vacating on February 28.

The landlord testified that she arranged for neighbours to check the cistern who reported that the cistern was full throughout the month of February. The tenant testified that she checked the cistern and saw that it was nearly empty throughout February.

The parties agreed that at the end of the tenancy the propane tank was 19 – 20% full. The landlord provided a letter from Superior Propane which stated that at the propane prices effective in December, the tenant would have paid \$286.36 to fill 20% of the tank.

The tenant moved out at the end of February and the landlord re-rented the rental unit to tenants who began their tenancy on April 1. The landlord testified that the current tenants have had no problem with water in the rental unit.

The landlord seeks to recover \$1,100.00 in loss of income for the month of March pursuant to the fixed term tenancy agreement, \$50.00 for the cost of advertising and

\$400.00 for the cost of propane pursuant to the term in the tenancy agreement which provides that the tenant must replace \$400.00 in propane at the end of the tenancy.

Analysis

In a fixed term tenancy, the tenant is obligated to pay rent throughout the term of the tenancy unless the landlord agrees to release her from the lease or unless the landlord has breached a material term of the tenancy and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure. In this case, the landlord clearly did not release the tenant from the lease. In order to establish that the landlord breached a material term of the tenancy, the tenant must prove that provision of water was a material term of the tenancy. The tenant testified that the cistern was empty in February and that she objected to being told that she should arrange for water to be trucked in to fill the cistern. The tenancy agreement indicates that water is not included as part of the rent. I find that in this tenancy, the landlord was responsible to provide a working means for water to enter the rental unit, i.e. a working cistern and plumbing system, but that the tenant was responsible to pay for the water. I find that the tenant has not proven that the cistern or plumbing were inoperable in February and accordingly find that the tenant did not have the right to break the lease. I find that the landlord acted reasonably to mitigate her losses by advertising the rental unit and I find that the landlord is entitled to recover \$1,100.00 in lost income for the month of March and I award the landlord that sum. I also find that the landlord is entitled to recover the cost of advertising the rental unit in the newspaper and I award the landlord \$50.00 for advertising.

As for the landlord's claim for the cost of propane, I find that the term in the addendum to the tenancy agreement required the tenant to leave at least \$400.00 worth of propane in the tank. As neither party provided current rates for propane, I must use the rates for December provided in the letter from Superior Propane. I find that the tenant left only \$286.36 worth of propane in the tank and I award the landlord \$113.64 which is the difference between the \$400.00 the tenant should have left and the \$286.36 which she did leave.

The landlord also applied to recover the cost of sending documents to the tenant via

registered mail. Under the Act, the only litigation-related cost I am empowered to award is the cost of the filing fee paid to bring an application for dispute resolution. The claim for registered mail costs is dismissed.

Conclusion

The landlord is awarded \$1,313.64 which represents \$1,100.00 in loss of income, \$50.00 for advertising, \$113.64 for propane and the \$50.00 filing fee paid to bring this application. I order that the landlord retain the deposit and interest of \$551.74 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$761.90. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated June 02, 2009.