

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act and the tenancy agreement, and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began in January of 2007, with the Tenant moving into a manufactured home owned by the Landlord. The Tenant paid a security deposit of \$225.00 on January 15, 2007.

At the outset of the tenancy the rental unit was heated by natural gas. During the course of the tenancy the natural gas was cut off to the unit and eventually the gas meter was removed and the gas line was capped by the gas company. Following the cut off of gas, the Tenant used electric space heaters to heat the rental unit.

The testimony of the Tenant was that the gas furnace did not function well. He alleged it was unusable during the tenancy, as the pilot light would often go out. He testified that he felt the electric heaters were sufficient to heat the unit and he chose to heat the unit electrically.

The evidence of the Landlord was that the gas had been shut off in May of 2008, for non-payment of gas bills. The meter was removed six months later, in November of 2008, due to the inactive gas account.

In December of 2008, the water pipes froze, burst and flooded the rental unit. The unit suffered extensive damage.

The Tenant argued that there was no contract with the Landlord that obligated the Tenant to use gas heating. He further argued that the rental unit was poorly insulated.

The Landlord also claimed the Tenant left a broken window at the unit and did not do any cleaning prior to vacating.

The Tenant argued that the window was broken when he moved in, although he agreed he did not leave the unit in the cleanest condition.

The Tenant vacated the rental unit in January of 2009, without Notice to the Landlord. He claims it was in unliveable condition and that is why he left. He put a stop payment on the January 2009 rent and did not attend the outgoing condition inspection report meeting.

The Landlord also claims for lost rent for the month of February 2009, due to the length of time it took to repair the unit.

The Landlord claims as follows:

a.	Rent due for January 2009	515.00
c.	Replace and repair plumbing throughout unit	2,268.60
d.	Replace broken window	107.30
e.	Replace carpets	816.30
f.	Cleaning supplies and labour	240.00
g.	Filing fee	50.00
	Total claimed	\$4,512.20

Analysis

Based on the testimony, evidence, photographs and a balance of probabilities, I find that the Tenant breached the Act by neglecting to heat the rental unit to a level which would prevent damage to the water pipes in the unit. I find the Tenant failed to make repairs to the plumbing which was damaged due to his neglect.

I also find the Tenant failed to leave the rental unit in a reasonable state of cleanliness, and did not pay rent for the month of January 2009. I further find that due to the condition the Tenant left the unit in, the Landlord suffered a loss of rent for the month of February 2009.

It is true that the Tenant did not have a contract obliging him to use natural gas to heat the unit, however, he was required under the Act to make sure the Landlord's property suffered no damage due to his occupation of the unit.

It is clear from the evidence provided by the Landlord, in the form of a letter from the gas company, that the gas was disconnected to the rental unit because the Tenant failed to pay his bill.

I also do not accept the Tenant's evidence that the window was broken in the unit when he moved in. The Landlord supplied a letter from a third party witness indicating the unit was in good condition when the Tenant moved in.

Section 67 of the Residential Tenancy Act states:

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.

I find the Landlord has established claims for all the items listed above, although I am reducing the amount allowed for the replacement of the carpets by 50% to \$408.15, to reflect the depreciated value.

Therefore, I find that the Landlord has established a total monetary claim of **\$4,104.05** comprised of the amounts described in the table above, less the depreciated value of the carpets.

I order that the Landlord retain the deposit and interest of **\$231.67** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$3,872.38**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant was negligent when he allowed the unit to get so cold the pipes froze and burst. The Tenant's negligence caused losses to the Landlord, and the Tenant must compensate the Landlord for these losses.

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: September 18, 2009.

Dispute Resolution Officer