



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: *MNDC, RR, O*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order for a rent reduction due to the absence of a fire place and for compensation in the amount of eight weeks rent for the unit being uninhabitable while repairs were carried out.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Was the fireplace included in the tenancy agreement? Did the landlord make an appropriate arrangement with the tenant with regard to repairs?

Background and Evidence

The tenancy started on April 14, 2008. The monthly rent is \$3,500.00 due in advance on the 14th of each month. The tenant paid a security deposit of \$1,750.00 prior to moving in.

The tenant stated that she signed a lease which included a fireplace which was subsequently removed from the home due to a structural failure. This was followed by eight weeks of repairs during which time; the home was uninhabitable except for the bedrooms and bathrooms. The tenant wants a rent reduction in the amount of \$250.00 for the absence of a fireplace. The tenant also wants her rent reimbursed for the eight weeks during which the repairs were carried out.

The tenant has filed copies of email correspondence between herself and the landlord, the lease and its attachments, the house manual and the condition inspection report.

The landlord stated that in January 2008, prior to the tenants moving in, there was considerable damage done to the property due to a snow storm. The roof, side wall, chimney and fireplace collapsed and caused damage to the neighbour's house. The landlord filed an insurance claim. The home was made habitable using temporary measures until such time it was safe to carry out repairs. The fireplace was removed from the premises. The landlord filed photographs of the damage to the rental home and to the neighbour's home.

At the time of the collapse the house was rented for \$4,000.00 per month. The landlord filed a copy of the previous occupant's lease. The previous occupant moved out in March 2008. Prior to moving out, the previous occupant agreed to show the home to the current tenant. The tenant viewed the property and agreed to lease it for a period of two years. The landlord stated that at the time the tenant viewed the unit, the fireplace was not inside the home and it was obvious that the home had sustained considerable damage and needed repairs.

The parties entered into a tenancy agreement on March 21, 2008. The landlord stated that she lowered the rent to \$3,500.00 because of the condition of the home and the longer term of the lease. The landlord had a discussion with the female tenant regarding the repairs that needed to be done after the temperatures rose and the snow melted. The tenant indicated to the landlord that the family would be away on vacation for six weeks in summer and it was ok to carry out the repairs during that time.

On April 09, 2008, both parties conducted an inspection and the report was filed as evidence. Since the fireplace was not inside the home, the condition of the fireplace was marked "insurance". The landlord stated that at no time before or during the signing of the inspection report and the lease did she indicate that a wood burning fire place would be installed. The landlord stated that the tenant was made aware of the fact that the home was in a condition that was fixed temporarily and waiting for the snow to melt before the repairs would be done. The tenant moved in on April 09, 2008.

The landlord also gave the tenant a house manual which contained information about the fireplace. The landlord stated that the manual is outdated and contains some incorrect information. It is intended to assist the tenant with items that require instruction and is not a guarantee of the existence of the item.

The landlord stated that the chimney that housed the wood burning fireplace had collapsed on more than one occasion, in the preceding years and due to the instability of the chimney structure it was not safe to reinstall a wood burning fireplace.

In May 2008, the landlord informed the tenant that for safety reasons the wood burning fireplace could not be reconstructed and she offered the tenant an electric fireplace. The tenant rejected the offer and requested a rent reduction.

The tenant stated that the advertisement that she viewed on the website had a photograph of the fireplace. The landlord argued that the photograph is from 2007 and is placed on the website of the property management company that managed her rental unit in 2007. The landlord stated that the tenant was made aware of the condition of the home, the lack of a fireplace and the impending repairs when she viewed the unit.

In June 2008, the landlord made arrangements for the repairs to be carried out to coincide with the travel dates given to her by the tenants. The landlord filed a copy of the email correspondence between the parties to confirm the arrangements. The repairs were completed by August 10, 2008.

On August 14, the tenant emailed the landlord with a request that her rent be reduced by \$250.00. The landlord pointed out that the tenant did not mention that the unit was uninhabitable while the repairs were going on, in this email or any other subsequent emails.

The landlord stated that to maintain a good relationship with the tenant, she offered a rent reduction of \$75.00 per month. The tenant rejected the offer. The landlord stated that she contacted the office of the Residential Tenancy Board and based on the information that she received, she determined that a rent reduction was not necessary.

In addition, she stated that heating a house by burning wood in a fireplace is actually less efficient and more costly than heating with electricity. However, to maintain a good rapport, the landlord offered a rent reduction of \$25.00 per month. The tenants rejected this offer.

Analysis

Based on the evidence filed and the verbal testimony of both parties, my findings are as follows:

Rebate of rent for eight weeks:

- At the time the tenant viewed the rental unit, she was made aware of the condition of the unit and the need for repairs.
- The landlord has already reduced the rent by \$500.00 due to the condition of the home and the inconvenience during repairs.
- The tenant informed the landlord that she would be away on vacation for six weeks in June/July and agreed that the repair work could be conducted during this time.
- The landlord made arrangements for the work to start based on the travel dates of the tenant.
- The tenant did not complain about the unit being uninhabitable through and after the repairs, in notes written to the landlord.
- The tenant stated that she applied for compensation because a property manager advised her to do so.

For the above reasons, I find that the tenant is not entitled to be reimbursed for rent for eight weeks and accordingly the tenant's claim is dismissed.

Rent Reduction:

- The fireplace was not inside the home when the tenant viewed the home with intent to rent.
- The landlord lowered the rent by \$500.00 because of the condition of the home and the impending repairs.

- The tenant was aware that the landlord had filed an insurance claim and the landlord did not guarantee the tenant that a wood burning fireplace would be installed
- The landlord offered the tenant an electric fireplace which she declined
- The landlord has filed evidence to support that the tenant did not incur any additional heating costs due to the lack of a wood burning fireplace.

For the above reasons, I find that the tenant has not proven her case and therefore her claim for a rent reduction in the amount of \$250.00 per month is dismissed.

However, the landlord did offer a rent reduction of \$25.00 per month in the interest of maintaining a cordial relationship with the tenant. Therefore, I grant the tenant a reduced rent in this amount effective retroactively from the start of the lease.

Conclusion

I grant the tenants a rent reduction in the amount of \$25.00 per month effective April 2008. The tenant may deduct this amount from a future rent.

Dated December 02, 2009.

Dispute Resolution Officer