

DECISION

Dispute Codes MNR, MNDC, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to obtain a Monetary Order for the cost of emergency repairs, and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)* , an Order reduce their rent for services or facilities agreed upon but not provided and to recover the cost of the filing fee.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on February 05, 2010. Mail receipt numbers were provided by the tenants in evidence. The landlord was deemed to be served the hearing documents on February 10, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover the cost of emergency repairs?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*?
- Are the tenants entitled to reduce their rent for services or facilities agreed upon but not provided?

Background and Evidence

This tenancy started on January 01, 2010. The tenants pay monthly rent is \$850.00 which is due on the first of each month and they paid a security deposit of \$425.00 on December 14, 2009.

The tenants testify that they paid rent of \$850.00 for the first month of January, 2010 but could not move into the rental property on the first of the month as the furnace was not working and there was no heating. The tenants claim they finally took possession of the home on January 11, 2010. The tenant's seek to recover rent for 10 days in January to a total sum of \$274.10.

The tenants claim that they called the landlord concerning the problems with the furnace and he agreed they could call the repair company to come and clean the furnace. The landlord paid \$165.00 of the total bill of \$199.50 and the tenants paid the remainder and asked the landlord to reimburse them for \$34.50 which the landlord has failed to do. The furnace was replaced on January 11, 2010. The tenant's claim the furnace repairman had to come out on three different occasions once on January 06, 2010 to clean the furnace, once on January 08, 2010 to provide an estimate for replacement and again on January 11 to actually replace it. Each time the landlord told the tenants he could not attend to let the repair man into the property as he had to work. One of the tenants took these days off work to let the repairman into the property. On each occasion a four hour window was required and one of the tenants had to take time off work to be at the house. This tenant testifies that he earns \$17.00 per hour for an eight hour working day. He could not take part of the day off as he did not work locally. The tenants are claiming three days of lost earnings to a total of \$408.00.

The tenants claim that when they signed the lease the washer and dryer were included but they found that these were not working either. The tenants contacted the landlord and informed him of these issues and the landlord gave the tenants permission to buy a second hand washer at \$160.00. The tenants have not been reimbursed for this cost.

The tenants also found the stove was not working correctly. The tenants have been unable to use the oven and seek the landlord to repair or replace it or allow them to reduce their rent for the loss of this facility. The tenants found the previous tenants had left a large amount of wood, garbage and some garage doors in the back yard which they want the landlord to remove. The tenant cleared some garbage from the back garden and put it in the garage. They have not been able to use the garage to park their car and request a rent reduction for this loss of facility.

The tenants claim they attempted to pay the landlord the rent for February, 2010 but when they asked him to reduce the rent for the 10 days in January they were unable to live in the rental house he refused and wanted them to leave because of all the trouble the tenants had caused in wanting the repairs done. The tenants state that they sent the rent cheque for February, 2010 with the notice of this hearing but the landlord has not accepted it and returned it to the tenants.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of the tenants; I find the tenant did not have use of the rental property at the start of their tenancy because the furnace was not working. Section 32(1) of the Act states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

As it took 11 days for the landlord to replace the furnace, I find the tenants are entitled to a rent reduction in compensation for the first 10 days in January, 2010 to a sum of **\$ 274.19** pursuant to section 67 of the *Act*.

With regard to the balance of **\$34.50** the tenants paid for the furnace repair, I find they are entitled to recover this amount from the landlord pursuant to 65(1)(f) of the *Act*. I further find the tenants are entitled to be compensated for three days of lost earnings as the landlord could not attend the rental property to allow access for the repairs and replacement of the furnace. Consequently I find the tenants are entitled to recover the sum of **\$480.00** and may reduce their rent accordingly pursuant to section 65(1)(f) of the *Act*.

I also find the tenants had an arrangement with the landlord that they could replace the washer with a second hand one as the one in the rental property was not working. Consequently, I find

the tenants are entitled to recover the cost of **\$160.00** and may reduce their rent accordingly pursuant to section 65(1)(f) of the *Act*.

I find in favour of the tenants claim to allow them to reduce their rent for services or facilities agreed upon but not provided pursuant to section 27(2)(b). In this instance I find the landlord did not provide the tenants with a fully functioning stove. Consequently I find the tenants are entitled to reduce their rent by \$50.00 per month for January, February and March, 2010 to a total sum of **\$150.00** pursuant to section 65(1)(f) of the *Act*.

The tenants also seek an Order for the landlord to clear the garbage, wood and old garage doors from the garage and back yard. However, the tenants have now given the landlord notice to end the tenancy at the end of March 2010. So an Order would be ineffective at this time. However, it is my decision that the tenants may reduce the rent for the loss of the use of the garage due to the garbage stored in this area to a sum of \$25.00 per month for January, February and March, 2010 to a total sum of **\$75.00** pursuant to section 65(1)(f) of the *Act*.

As the tenants have been successful with their claim I also find they are entitled to recover the **\$50.00** filing fee from the landlord for the cost of this proceed pursuant to section 72(1) of the *Act*.

At the hearing the tenants state that the landlord has returned the rent cheque they sent him for Februarys rent and they have not yet paid rent for March, 2010. I find therefore, that the tenants may deduct the sum of **\$1,223.69** from the rent owed to the landlord pursuant to section 65(1)(f).

Conclusion

The tenant's application is allowed. As the tenants have been successful in seeking a monetary award for the cost of emergency repairs, money owed or compensation for damage or loss and a rent reduction for services and facilities agreed upon but not provided; I find the tenants are entitled to deduct the amount of **\$1,223.69** from the balance of rent owed to the landlord. Therefore, I find the tenants owe the landlord the sum of **\$476.31** for the balance of rent for February and March, 2010.

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: March 19, 2010.

Dispute Resolution Officer