

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application for compensation for damage or loss under the Act, regulations or tenancy agreement and recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party. Both parties confirmed service of documents upon them.

Issues(s) to be Decided

Has the tenant established an entitlement to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

I heard undisputed evidence as follows. The tenancy commenced in 2002. The tenant pays rent of \$973.00 plus her own utilities. Prior to August 2009 the rental property was heated by an oil furnace. The oil tank had a capacity of 1000 litres. At the commencement of the tenancy the landlord measured the oil in the oil tank and estimated the tank was 1/3 full. The landlord recorded that the oil tank was 1/3 full on the move-in inspection report signed by both parties. In August 2009 the oil furnace was replaced by a high efficiency gas furnace. The heating company pumped approximately 600 litres of oil from the oil tank and later compensated the tenant \$150.00 for the oil removed from the tank.

In making this application, the tenant is seeking compensation of \$450.00 from the landlord. The tenant is of the position the 600 litres of oil in the tank cost her \$600.00 and since she was reimbursed only \$150.00 by the heating company, the landlord

should pay her the difference. The tenant submitted that the last time she purchased oil it was at a cost of \$0.934 per litre.

The landlord was of the position that of the 600 litres pumped from the oil tank approximately 333 litres were supplied by the landlord at the beginning of the tenancy leaving 267 litres purchased by the tenant. Since the tenant has received \$150.00 from the heating company the tenant has effectively been compensated \$0.562 per litre. The landlord submitted that the cost of oil is approximately \$0.6499 per litre as of October 2009. It was the landlord's position that any loss to the tenant has been more than made up by the savings in heating costs the tenant will enjoy due to the installation of the high efficiency gas furnace and new windows installed in the rental property during the tenancy.

As evidence for the hearing, the landlord provided a copy of the tenancy agreement, move-in inspection report, communication between the parties, and a calculation done by the heating company that indicates that switching to the new heating system will result in a savings of approximately \$1,231.00.

The tenant did not agree that she will save as much money as estimated by the heating company on the ground that she budgets on \$600.00 for heating costs in total.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I have reviewed the tenancy agreement and I have considered the provisions of the Act and regulations. I do not find that the landlord violated a term of the tenancy agreement or a provision of the Act or regulations. In the absence of a violation by the landlord, the first part of the four part test outlined above has not been satisfied. Therefore, I do not find the tenant entitled to compensation from the landlord.

Even if I had found a violation by the landlord, I note that the tenant did not establish an actual loss of \$450.00 when I consider a portion of the oil in the tank belonged to the landlord and replacement of the old oil furnace with a high efficiency gas furnace. Nor did the tenant provide documentation to substantiate the cost of the oil in the tank was equivalent to \$1.00 or \$0.934 per litre.

Conclusion

The tenant was unsuccessful in establishing an entitlement to compensation from the landlord and the tenant's application is dismissed without leave.

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 16, 2010.

Dispute Resolution Officer