

DECISION

Dispute Codes

MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement, for the return of the security deposit and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on January 25, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for loss or damage?
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- Are the tenants entitled to recover the security deposit?

Background and Evidence

This tenancy started as a fixed term tenancy on October 01, 2008 and reverted to a month to month tenancy at the end of the fixed term. The tenants paid a monthly rent of \$1,000.00 which is due on the first of each month. The tenants paid a security deposit of \$500.00 on September 30, 2008. The tenants sent the landlord their forwarding address in writing on December 29, 2009.

The tenants claim they had to leave the rental unit and subsequently end the tenancy on December 21, 2009. The tenants testify that on December 17, 2009 the furnace in the unit stopped working and they had no heat. They attempted to contact the landlord on the numbers provided but were unable to speak to him. The tenants claim they contacted a plumbing company who came to look at the furnace on December 18, 2009. This plumber noted in his letter that the roll out limit switch had popped. He cleaned the burners and vents and noted excessive carbon. After cleaning he fired up the furnace which ran for a short time until the limit switch popped again. The plumber noted that he checked the CO2 levels because he suspected a cracked heat exchanger. The level of carbon monoxide was extremely high on the detection meter so he shut the furnace down and capped the gas line as well as the power and filed a report with the BC Safety Authority stating that the furnace must be replaced.

The tenants testify that they spoke to the landlord who told them to buy some heaters. However, this was not acceptable to the tenants due to the time of year and the carbon monoxide levels in the property. The landlord did not do anything to rectify the situation. The tenants then decided to find alternate accommodation. The tenants seek their rent back for December, 2009 of \$1,000.00 and \$300.00 for compensation for paying rent elsewhere. The tenants also seek the return of their security deposit of \$500.00.

The landlord testifies that he is trying to sell the property and cannot afford to replace the furnace. The landlord agrees that he did tell the tenants to buy some heaters for the house and he tried to reimburse them for these but the tenants informed him that they were moving out. The landlord claims the tenants left the property in a dirty and unkempt condition with garbage left in the house and yard.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; Section 32 of the Act states that a) a landlord must provide and maintain a residential property in a state of decoration and repair that 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. In this instance I find the landlord is in breach of section 32 of the Act as he did not maintain the furnace to ensure the health and safety of the tenants or ensure the property was suitable for occupation by the tenants. Consequently the tenants are entitled to end the tenancy without giving the landlord proper notice as specified under section 45 of the Act.

The tenants seek the return of all the rent for December, 2009 of \$1,000.00; however, I find that as the furnace did not stop working until December 17, 2009 they are entitled to recover the rent paid for the remainder of the month of December, 2009 to the sum of **\$483.87** ((15 days at \$32.25) pursuant to section 67 of the Act.

I also find the tenants are entitled to be compensated for the additional rent they had to pay to find alternative living accommodations for December, 2009 as the landlord did not comply with section 32 of the Act, The receipt the tenants have provided shows they paid \$290.00 for this accommodation. Therefore they are entitled to recover the sum of **\$290.00** pursuant to section 67 of the Act.

I find the tenants did give the landlord their forwarding address in writing in December 29, 2009. Section 38 of the Act states that landlord has 15 days to either return the security deposit or make a claim to keep it. Therefore, the landlord would have had until January 13, 2010 to return the deposit or file an application to keep it. The landlord has not returned the tenants security deposit and I can find no evidence that he has filed an application to keep it. Consequently, pursuant to section 38 of the Act the tenants are entitled to the return of their security deposit to the sum of **\$500.00** plus accrued interest of **\$01.91**.

As the tenants have been largely successful with their claim I find they are entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the Act. A Monetary Order has been issued for the following amount:

Compensation for rent paid for December, 2009	\$483.87
Security deposit plus accrued interest	\$501.91
Filing fee	\$50.00
Total amount due to the tenants	\$1,325.78

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,325.78**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: April 16, 2010.

Dispute Resolution Officer