

## **DECISION**

### **Dispute Codes:**

For the landlord     MND, MNDC, FF  
For the tenant       MNDC, FF

### **Introduction**

This hearing was convened in response to an adjournment of a cross application hearing conducted on March 17, 2010, whereas only the tenant's portion of their application for compensation for *damage and loss under the Act* was put over to today's date. In the interim the landlord filed a new application resulting it to be heard concurrently with the adjourned matter. A previous Order of Possession and Monetary Order were granted to the landlord. The tenant had vacated by March 26, 2010.

Both parties attended the conference call hearing and each participated with their submissions, questions and testimony

The tenant is seeking:

- Compensation for damage or loss under the Act, regulation or tenancy agreement: Abatement of rent paid.
- Recovery of filing fee.

On April 07, 2010 the landlord made application seeking: (verbally amended at hearing)

- Compensation for damage or loss under the Act, regulation or tenancy agreement: loss of revenue in the equivalent of one week's rent - \$255, natural gas utilities arrears paid by landlord - \$700.
- Damages to the unit totalling \$715 for drywall damage, cleaning, missing light fixtures, missing thermostat cover, door bell, light switch, electrician's labour.
- Recovery of filing fee.

### **Issue(s) to be Decided**

Is the tenant entitled to the monetary amounts claimed?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

This tenancy began on September 01, 2009 and ended March 26, 2010. Rent in the amount of \$1020 was payable in advance on the first day of each month. The parties do not dispute that the tenant and landlord did not mutually attend to a start of tenancy inspection or an end of tenancy inspection as required.

The tenant testified that at the outset of the tenancy in September 2009 they notified the landlord of a peculiar odour / smell on operation of the furnace system. Tenant claims the landlord asked the tenant to research when it had last been serviced, but did not ascertain the unit for problems or deficiencies. The tenant testified that due to the landlord's seeming indifference of the issue and continuous respiratory issues and ongoing odour from the furnace, as well as an apparent lack of service of the furnace (from a dated service sticker) they sought consultation of Terasen Gas on February 05, 2010, who immediately shut off the furnace unit due to a carbon monoxide leak. The landlord disputes that the tenant notified them of a potential problem in September 2009, but nonetheless responded to the problem identified on February 05, 2010 by quickly sending contractor to fix the problem with the furnace. The landlord provided an invoice from a heating contractor identifying the problem as "furnace tagged by Terasen Gas for a carbon monoxide leak", finding the furnace to be plugged – not allowing products of combustion to flow properly – and spilled into house. The tenant testified that in the previous four (4) months the tenant and their partner suffered respiratory discomfort as a result of the malfunctioning furnace system.

The tenant also testified that in October 2009 the tenant notified the landlord of a leaking roof – made apparent from water ingress down an interior wall of the house. The tenant claims the landlord said they would attend to necessary repairs when weather was more permitting, and as time advanced the water ingress apparently caused mould formation which the tenant claims caused them additional respiratory distress. The tenant provided a fungal sample analysis report dated February 12, 2010

from a sample submitted for analysis by the tenant on February 08, 2010. The report simply identifies the presence of mould and recommends remediation of the source.

The landlord denies that the tenant notified them of a water leak in October, and that the tenant first notified them in January 2010 – to which the landlord responded with a repair on February 09, 2010. The landlord provides an invoice, which I am satisfied reflects the repairs performed on February 09, 2010. The tenant acknowledges that the water ingress, soon after, ceased.

The tenant further testified that they went without hot water and heat for the first 3 weeks of March 2009. Both parties acknowledged that billing issues prevented the provision of the gas utility. The tenant testified that Terasen Gas placed the reason for the lack of gas on the landlord's failure to place the gas account in their name due to the account history for the rental unit. Despite the landlord claiming they did not receive the tenant's evidence of a letter from Terasen Gas explaining the process, the landlord did not dispute the contents of the letter.

The landlord is claiming for recovery of the gas utility charges incurred by the tenant during the tenancy in the amount of \$700, which the tenant does not dispute. The landlord further claims loss of revenue for a portion of April 2010. The tenant vacated no later than March 26, 2010, which the landlord claims did not give them sufficient time to ready the rental unit for new tenant. The landlord stated that they did not have tenants available for April 01, 2010. Regardless, the landlord claims that if they had, the tenant had caused damage to the some drywall and left the rental unit unclean. The landlord provided an estimate for the drywall damage repair. The landlord is also claiming they had to clean the rental unit, for which they provided copier copies of photographs in support of their claim. The landlord is also claiming costs for missing light fixture covers, missing bulbs, missing thermostat cover, replacement of door bell, and a light switch, and the requisite labour for an electrician. The tenant claims that all of the damage claimed by the landlord was present when they moved in, and that a start of tenancy inspection was not performed at the outset of the tenancy, therefore, the landlord was not aware of the deficiencies which they identified.

## **Analysis**

On reflection of the mostly contrasting testimony and on the preponderance of all the evidence and submissions in this matter, I find I prefer the tenant's testimony and evidence in respect to the issue of the furnace problem. On the balance of probabilities, I prefer and find the tenant notified the landlord in September 2009 of a pending issue with the furnace to which the landlord failed to respond. As a result, I grant the tenant rent abatement in the amount of \$250 for September and October 2009, and \$225 per month for each of the three (3) months preceding the furnace repairs for a total of **\$925**.

I find I prefer the tenant's testimony and evidence in respect to the issue of water ingress and the ensuing fungal growth. On the balance of probabilities, I prefer and find the tenant notified the landlord of the water ingress in October 2009, yet repairs were not accomplished until February 2010. I grant the tenant rent abatement in the amount of \$100 for the month of October 2009, and \$225 per month for each of the three (3) preceding months prior to the repairs to the roof leak February 09, 2010 for a total of **\$775**.

I grant the tenant **\$150** rent abatement for the lack of hot water and heat for the duration of March 2010. I further grant the tenant partial recovery of their filing fee in the amount of \$25, for a total entitlement of **\$1875**.

In the absence of 'start and end' of tenancy inspections and the requisite reports, I **dismiss** the landlord's claim for damages to the rental unit, without leave to reapply. I grant the landlord recovery of the gas utility in the landlord's name ( but the responsibility of the tenant under the tenancy agreement) in the amount of **\$700**. I accept the landlord's testimony that the rental unit required some cleaning at the end of the tenancy, partially supported by the landlord's evidence. In the absence of any accounting in respect to cleaning of the rental unit, lack of receipts, and lack of a move out inspection report, I grant the landlord **\$200** for cleaning. The landlord argued that the tenant's negligence contributed to the landlord not being able to re-rent the rental unit April 01, 2010. I find the landlord knew since March 17, 2010 that the tenancy was ending no later than March 29, 2010, and specifically requested that the tenancy end

before March 31, 2010 so as to accommodate any necessary preparations for new tenants. As well, as I have not found the tenant responsible for any remediation the landlord determined the rental unit warranted, I decline to award the landlord loss of revenue based on the need for cleaning of the rental unit. **I dismiss** this portion of the landlord's claim without leave to reapply. I grant the landlord \$25 of their filing fee, for a total entitlement in the amount of **\$925**.

### **Conclusion**

**I grant** the **tenant** a Monetary Order under section 67 of the Act for the difference in the parties' entitlements, in the amount of **\$950**. If necessary, this order may be filed in the Small Claims Court and enforced 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*.

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