

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened to deal with an application by the tenant pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement and authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant provided undisputed testimony that she sent the landlord a copy of her application for dispute resolution by registered mail on June 7, 2010. She provided the Canada Post Tracking Number. The landlord confirmed receipt of this document. I am satisfied that the tenant has served her application in accordance with the *Act*.

Issues(s) to be Decided

Is the tenant entitled to a monetary order? Is the tenant entitled to recover her filing fee from the landlord?

Background and Evidence

This six-month fixed term tenancy commenced on May 1, 2010. The tenant pays \$850.00 in rent on the first of each month.

The tenant testified that when she moved into the rental premises the furnace was not working and she had no heat. She said that she called the landlord a number of times to try to get the heat operating but no one would come to fix her problem. She testified that the heating problem was not resolved until May 10, 2010. As the landlord was required to provide her with heat as part of her tenancy agreement, she applied for a \$200.00 monetary order for the period when heat was not provided by the landlord.

The landlord submitted written evidence and oral testimony that he tried to get this heating problem fixed as soon as she called about this matter. The landlord said that the tenant refused to provide maintenance staff with access to her rental unit when she was not present. He said that she would only let them in after 6 p.m. or on weekends. He said that it would be difficult to obtain servicing during these hours. He testified that the tenant agreed to let the landlord schedule the servicing over her lunch hour, but she would not know until each morning when she would be able to take her lunch hour.

The landlord also submitted into evidence a copy of Item 7 in the Addendum to this Residential Tenancy Agreement which states that “all requests for repairs and other complaints or suggestions must be in writing.” He provided a copy of the first written notice that the landlord received from the tenant about this matter dated May 12, 2010. He noted that the tenant requested repair of the heating problem and a \$100.00 reduction in her rent until the problem was repaired. He submitted a copy of his June 18, 2010 letter to the tenant in which he noted that her heating problem was fixed by the landlord’s maintenance manager on May 10, 2010, before she sent her letter.

The tenant gave sworn testimony that she sent the May 12, 2010 letter requesting repairs to the heating after these problems were fixed on May 10, 2010.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.

Based on the evidence before me, I accept the landlord’s testimony that the tenant did not take the steps necessary to arrange for repairs to the heating in her rental unit. I find that the restrictions the tenant placed on the landlord’s access to her rental unit delayed the landlord’s efforts to fix this problem. The tenant did not make her request for repairs in writing to the landlord as set out in the Addendum to her tenancy

agreement. When the tenant did make a written request, she asked for repairs that had already been made.

I dismiss the tenant's application for a monetary Order because she did not take proper steps to ensure that these repairs could be undertaken by the landlord.

Conclusion

I dismiss the tenant's application for a monetary Order. Since the tenant was unsuccessful in her application, I make no order allowing her to recover her filing fee from the landlord.

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*.