



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for monetary compensation in the form of a retro-active rent abatement as damages for a violation of the Act by the landlord and an Order that the landlord comply with the Act. Both parties appeared and gave testimony.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the tenant is entitled to monetary compensation under section 67 of the Act for damages or loss and whether the landlord should be ordered to comply with the Act. The burden of proof is on the applicant.

Background and Evidence

The tenancy began in June 2005 and the current rent was \$985.00. A security deposit of \$450.00 was paid. The tenant moved out on July 1, 2010.

The tenant testified that, although the landlord had issued a One Month Notice to End Tenancy for Cause on April 6, 2010, on the basis of repeated late payment of rent, the landlord's acceptance of payment for months following this notice had functioned to reinstate the tenancy. The tenant testified that they subsequently chose to vacate the rental unit due to other factors. The tenant stated that the landlord had also mentioned that a family member was going to move into the unit on several occasions. The tenant was of the opinion that this would amount to ending the tenancy for landlord's use and would therefore warrant the applicable compensation for such a Notice.

The tenant testified that at the start of the tenancy the landlord was supposed to complete installation of electric base-board heating. However, the landlord neglected to do so and the tenant utilized space heaters for the duration of the tenancy. According to the tenant, they recently realized that this method of heating was a lot more costly than baseboard heaters and the tenant estimated a loss over the five winter seasons in the amount of \$50.00 per month, totaling over \$1,500.00.

The landlord testified that the tenancy was validly ended through the One-Month Notice for Cause, that being late payment of rent. The landlord did not dispute that there was no permanent heat source in several rooms of the house. While the landlord conceded that this would have imposed some inconvenience, the landlord disputed that it would have significantly impacted the cost to heat the home. The landlord also testified that he did not realize that this had been an important issue for the tenant until now.

Analysis

In regards to the tenant's allegation that the tenancy ended for landlord's use, I find that regardless of what was discussed between the parties, the One-Month Notice had been issued based on repeated late payment of rent, and the tenant did not apply to dispute this Notice within the required 10 days. I reject the premise that the tenant considered the tenancy to be reinstated based on the fact that the tenant proceeded to move out on July 1, 2010.

In regards to the monetary claim, I find that in order to justify payment of damages under section 67, the Applicant has a burden of proof to establish that the other party did not comply with the agreement or Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. The evidence must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant to prove a violation of the Act or agreement and a corresponding loss.

I find that section 32 of the Act imposes responsibilities on the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. I find that this would

include adequate heating in each room. I find that the tenant's claim has clearly met elements 1 and 2 of the test for damages, and there may have been a loss incurred under element 3. However the amount of the loss must be quantified and proven and I find that the parties were at odds about this issue. In addition to the above, I find that the tenant did not fully meet element 4 of the test, in that there was an obligation to mitigate the loss by addressing it in a timely way.

Given the above, I find that while the tenant is entitled to some rent abatement, the heat issue should have been pursued by the tenant within the first year of the tenancy and therefore the compensation owed would be restricted to the winter of 2005/2006. I estimate that the tenant would be entitled to a rent abatement of 5% for both the alleged extra cost and the inconvenience of using space heaters instead of enjoying a building-code-compliant heat source. Accordingly, I find that the tenant is entitled to \$47.50 per month for 6 months totalling \$285.00.

Conclusion

Based on the testimony and evidence discussed above, I hereby grant a monetary order to the tenant for \$310.00 comprised of a rent abatement of \$285.00 and \$25.00 for half of the fee paid by the tenant for the application. The tenant must serve this on the landlord and the order may be enforced through an application to Small Claims Court if it remains unpaid.

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: November 2010.

Dispute Resolution Officer