



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MND, MNR, MNSD, OPR, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a cross-application by the landlords for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

The tenant asked to be permitted time to submit all of the invoices and record of payment throughout the tenancy. She claimed that the government agent through whom she made her application for dispute resolution told her that she did not need to submit all of the records at the time the application was made but should ask at the hearing if they were required. The tenant's request was denied as the landlord would have been deprived of the opportunity to respond to the tenant's submissions. Although the tenant may have received this advice with respect to her claim to set aside the notice to end tenancy, the landlord's application clearly claimed that the tenant had failed to pay rent and propane charges and the tenant should have known that records would be required. I found that the tenant chose not to submit the records in advance despite the clear instructions which were included with her hearing documents which advised that all evidence she wished to be considered must be submitted at least 5 days prior to the hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in late September 2009 and ended on October 31, 2010. The tenant was originally responsible to pay \$1,100.00 per month in rent but that sum was reduced to \$800.00 per month in the spring of 2010. The parties further agreed that the tenant was responsible to pay for propane costs.

At the hearing the tenant testified that she had vacated the rental unit on October 31. The tenant confirmed that she had no objection to the landlord being awarded an order of possession.

The landlord claimed that at the outset of the tenancy, the propane tank was 60% full. The tenant claimed it was almost empty. The parties agreed that the tank was not supposed to be less than 30% full and that when it was filled, it was only filled to 80% capacity to allow for expansion.

The parties agreed that the propane tank was filled at the end of October and again at the end of December. At the time the tank was filled, the parties agreed that the landlord would pay for these fills and the tenant was responsible to pay him over time to reimburse him. When the landlord received the bills, he would forward them to the tenant and request repayment. The landlord testified that the tenant repaid all but \$299.00 of the balance from December. The tenant testified that her records show that she not only paid the \$299.00, but she overpaid the landlord by \$50.00. The tenant testified that after she realized how much it cost to fill the propane tank, she substantially altered her lifestyle, including using electric heaters, an electric kettle and electric frying pan, in order to drastically reduce her propane consumption.

The parties agreed that in late May the landlord expressed concern that the propane tank was under 30% full and that he asked the tenant to arrange for it to be filled. The tenant had the propane company fill the tank in June 2010. The tenant testified that she never received a bill. The landlord presented evidence showing that it cost \$1,234.39 to fill the tank and that as of September 10, \$24.69 in interest had accrued. The landlord argued that the tenant should have contacted either him or the propane company to

ensure that the bill was settled. The tenant testified that at the end of October when she vacated the rental unit, the propane tank was 55% full. The tenant argued that she should only have to pay that portion of the June propane fill which represents the portion she used, approximately 30% as the tank was not filled to 100% capacity in June. The landlord argued that he should be entitled to recover the entire cost of the June propane fill and testified that the tank was 50% full at the end of the tenancy.

The parties agreed that the tenant did not pay any rent for the month of October. The tenant testified that she did not pay rent because it was her understanding that the security deposit would be applied to the rent.

The landlord testified that at the end of the tenancy he discovered that the tenant's horse had damaged the fencing around the property. The landlord testified that he had installed lattice fencing in the summer of 2009 and that at the end of the tenancy, several parts of the fence were damaged. The landlord provided photographs which he claims were taken on September 18. The tenant testified that for the most part, the fence was left in the same condition as it had been at the beginning of the tenancy. The one exception was an area in which a post which the tenant claims was rotten was bent over and another area in which the tenant acknowledged that there were several lattice panels which were broken. The landlord presented evidence showing that the lattice cost \$26.49 per panel before taxes. The landlord estimated that he would need 11 panels and that the cost of the panels together with labour to make repairs would total approximately \$500.00.

In the rental unit, a piece of tongue and groove beadboard which had been applied on a horizontal axis was broken at the end of the tenancy. The tenant acknowledged having broken the piece. The landlord testified that the tongue and groove boards only came in sheets of 10 at a cost of \$40.00.

Analysis

As the tenant has no objection to the landlords being granted an order of possession, I grant the landlords an order of possession effective immediately.

I find that the tenant failed to pay rent in the month of October and I award the landlords \$800.00. The evidence submitted shows that the tenant acknowledged owing the landlord \$299.00 for propane fills in 2009 and in the absence of evidence showing that this sum has been satisfied, I award the landlords \$299.00 for those propane fills.

The tenant was responsible to fill the propane tank to the same level at which it was at the start of the tenancy. Although the tenant claimed that the tank was almost empty at the start of the tenancy, I find this unlikely as the landlord's actions during the tenancy show that he was vigilant in ensuring that the propane level did not drop significantly below 30%. The tenant was able to live in the rental unit for one month using propane for all her cooking and heating needs before the tank needed to be filled at the end of October. The tenant continued living in the unit using propane exclusively for 2 months before the tank again needed to be filled. In the second two month period, the propane level went from 80% to 30%, averaging approximately 25% usage each month. I find it likely that in the first one month period approximately 20% of the propane was used as this was a warmer month than November and December. I therefore find it likely that the tank was 50% full at the start of the tenancy. I find that the propane level was at approximately the same level at the end of the tenancy as it was at the beginning. The tenant must be held responsible for all of the costs of propane during the tenancy and I therefore award the landlords \$1,234.39 as the cost of the June propane fill.

I find that both the tenant and the landlords were negligent with respect to dealing with the bill. Ordinarily, because there was no agreement between the parties that the landlord would pay the June bill, I would find that the landlords had no obligation to forward the bill to the tenant as it would be reasonable to assume that she would pay the bill. However, the landlords knew that the account was in their name rather than that of the tenant and I find that upon receiving a bill for which they were not responsible, they should have contacted the tenant to ensure that she also received a copy. I further find that the tenant should have known that she was responsible for the bill and should have taken reasonable steps to discover what was owed. I find it appropriate to divide the cost of interest between the parties as both must bear some

responsibility for the belated payment. I award the landlords \$12.35 which represents one half of the interest payable.

I accept the landlords' testimony that the lattice panels were installed in the summer of 2009. I find that the tenant's horse damaged 8 of the panels. I find that the landlords have failed to prove that the 3 panels which the tenant reinforced were damaged. I accept that with HST the total cost of each panel is \$29.69. I award the landlords \$237.52 as the cost of the panels and a further \$120.00 which I find will adequately compensate the landlords for other materials and labour.

I find that the tenant damaged the beadboard in the rental unit. Although the beadboard is sold in packages of 10, the tenant should not be held responsible for the additional beadboard which the landlord may keep to perform any required repairs in the future. I award the landlords \$7.00 which will compensate the landlord for the cost of one board, HST and labour.

I find that the landlords are entitled to recover the \$50.00 filing fee paid to bring this application and I award the landlords \$50.00.

Conclusion

In summary, the landlord has been successful in the following claims:

October rent	\$ 800.00
October/December propane fill	\$ 299.00
June propane fill	\$1,234.39
June propane fill interest	\$ 12.35
Lattice and labour	\$ 357.52
Beadboard	\$ 7.00
Filing fee	\$ 50.00
Total:	\$2,760.26

I find that the landlords have established a claim for \$2,760.26. I order that the landlords retain the security and pet deposits totalling \$1,100.00 in partial satisfaction of

the claim and I grant the landlords an order under section 67 for the balance due of \$1,660.26. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: November 04, 2010

Dispute Resolution Officer