



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, PSF, & FF

Introduction

This hearing dealt with an application by the tenant seeking an Order that the landlord provide services or facilities that have been unlawfully withheld. Specifically the tenant alleges that the landlord is withholding heat to the rental unit and common areas. The tenant also seeks compensation for purchasing a space heater and \$100.00 in compensation for loss of heat over the last two months.

The tenant provided affirmed oral testimony and made submissions. The tenant also provided a witness who provided oral testimony. The tenant testified that the landlord was served with notice of this application and hearing in person on January 6, 2011.

Although the landlord was served with notice of this application and hearing, the landlord did not appear for the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary claim due to the landlord's failure to provide heat?

Background and Evidence

There is no written tenancy agreement; however, there was a verbal agreement that the tenant would rent a room in the residential property for the monthly rent of \$350.00 and a security deposit of \$100.00. The tenancy commenced on January 1, 2010.

The tenant and the tenant's witness both described how the landlord repeatedly refused to turn on the heat to the residential property and that all areas in the home have no heat including the bathrooms, kitchen and all bedrooms. Both the tenant and the tenant's witness testified that the landlord threatened to evict them if they continued to request that the heat was restored. According to the testimony of the tenant the landlord refuses to turn on the heat because the gas is too expensive.

The tenant stated that he purchased a space heater in the amount of \$40.00 to heat his room but this does not resolve the lack of heat in the rest of the residence. The tenant seeks a rent reduction of \$50.00 a month, for November and December 2010, to compensate for the lack of heat. The tenant also seeks an Order that the landlord restore the heat to the rental property.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony provided the tenant and his witness that the landlord has shut off the heat in this residential property contrary to sections 27 and 32 of the *Act*. Section 27 states that a landlord must not restrict or terminate a service or facility if is essential to the tenant's use of the rental unit as living accommodation or is a material term of the tenancy agreement. Section 32 of the *Act* provides that a landlord must provide and maintain a rental unit which complies with health, safety and housing standards.

I find that heat is both essential and a material term of the tenancy agreement and it must be provided by the landlord. I also accept that heat is required in a residential property to meet health, safety and housing standards.

Since there is no written tenancy agreement I am satisfied that heat is to be provide as a service. The landlord is in breach of the tenancy agreement and *Act* and I Order the landlord to immediately restore and provide heat to the residential property. Failure to comply with this Order could result in the landlord being found liable for breach of contract.

I am satisfied that the tenant has experienced a loss of heat for at least two months, namely November and December 2010, and I grant the tenant's request for a rent reduction of \$50.00 for each month. I also accept the tenant's request to recover the \$50.00 paid for filing this application from the landlord. The tenant is authorized to deduct **\$150.00** from his next month's rent.

I do not accept the tenant's claim for the cost of a space heater. The tenant did not provide any verification of this expense, such as a receipt for the item and therefore I deny the request for reimbursement of \$40.00.

Conclusion

The tenant's application is granted. I have determined that the landlord is in breach of the *Act* by terminating or restriction an essential service and by failing to provide and maintain a rental unit which meets health, safety and housing standards. The landlord is ordered to **immediately** restore the heat to the rental unit. The tenant is at liberty to file a further application for Dispute Resolution seeking compensation if the landlord fails to comply with this decision.

I have also determined that the tenant is entitled to compensation in the amount of **\$150.00** due to the landlord's breach of the *Act*. The tenant is authorized to deduct this sum from his next month's rent.

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: January 21, 2011.

Residential Tenancy Branch