



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD

Introduction

This matter dealt with an application by the tenant to obtain a monetary order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and for to recover her security deposit.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the landlord by registered mail on December 08, 2010 to the dispute address as this is the only address the tenant has as the landlords' place of business. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing and the hearing proceeded in the landlords' absence.

Both parties were provided the opportunity to present evidence and make submissions. As the landlord did not appear the submissions were made by the tenant. On the basis of the evidence presented at the hearing, a decision has been reached.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to recover her security deposit?

Background and Evidence

The tenants' undisputed testimony states that this tenancy started on October 01, 2010. This was a fixed term tenancy which was due to end on September 30, 2011. Rent for this unit was \$1,250.00 per month which was due on the first day of each month in advance. The tenant paid a security deposit of \$625.00 on September 15, 2010. The tenant gave the landlord her forwarding address in writing on November 16, 2010 and has provided a copy of this letter in evidence.

The tenant states when she moved into the rental unit she could smell gas so called the Terasan Gas Company who came to the unit on October 08, 2010. Terasan Gas found a gas leak from the stove and they turned the gas off to the unit. This left the tenant with no cooking facilities or hot water. The tenant states she called the landlord and he came to the unit on October 12, 2010. The tenant states the landlord said the stove was 13 years old and he would replace it with an electric stove as this was the tenants' preference.

The tenant states she heard nothing else from the landlord and had to stay with friends as she could not live in the rental unit without cooking facilities or hot water. On October 28, the landlord notified the tenant he had a new stove for her so she left her keys for the landlord to gain entry to fit the new stove. The tenant states when she returned to her unit she found the landlord had not replaced the stove but had just turned the gas back on to the old stove. The tenant states she complained to the landlord about this and states he did not use a certified gas man to turn the gas back on. She states she asked him to reimburse her for Octobers rent as she did not live in the unit throughout October, or end the tenancy as she could not live there with a gas leak. The tenant states the landlord refused to reimburse her rent and refused to sign a mutual agreement to end the tenancy. The tenant states she gave the landlord written Notice to end her tenancy on October 28, 2010 effective on November 30, 2010. The tenant states she paid rent for November and moved out on November 15, 2010. The tenant seeks to recover her rent for October and November, 2010

of \$2,500.00 due to the gas leak and because the landlord did not provide essential facilities so she could live in her unit.

The tenant states she had to hire a post Office box as she did not want the landlord to have her new address. She seeks to recover this cost back from the landlord of \$165.32(receipt provided).

The tenant states when she moved into the unit she had to pay for a moving truck and as she could no longer live in the unit she had to pay for another moving truck just six weeks later. The tenant seeks to recover the cost of moving out of the unit to the sum of \$109.68 (receipt provided)

The tenant states when she moved to the unit she brought with her her motor home as she is rebuilding it. The motor home does not run and the tenant had to pay to have it towed to the unit and then six weeks later towed away from the unit. The tenant seeks to recover the cost of towing the motor home away to the sum of \$335.66 (receipt provided).

The tenant states the landlord has not returned her security deposit despite having a forwarding address and requests for the return of her deposit. The tenant seeks to recover her deposit of \$625.00 from the landlord.

Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and affirmed testimony before me.

With regard to the tenants claim for the return of two months' rent; s. 32 of the *Act* states: *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, and having regard to the age, character and location of the rental unit, makes it suitable for occupation*

by a tenant. S. 27 of the Act states: a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation.

In this matter I find the landlord failed to maintain the gas stove which resulted in a gas leak and because of this Terasan Gas turned off the gas which resulted in the tenant losing her cooking facilities and hot water facilities. Consequently, the tenant could not reside in the rental unit for most of October, 2010. I further find the landlord did not replace the stove as agreed with the tenant and turned the gas back onto a faulty stove without using a certified technician. In doing so the landlord breached s. 27 and 32 of the *Act* and consequently the tenant has established her claim to recover rent for October and November to the sum of **\$2,500.00** pursuant to s. 67 of the *Act*.

With regard to the tenants claim for costs associated in having to move from the rental unit. I do not accept the tenants claim for having to rent a post office box instead of giving the landlord her address, as this was the tenants' choice to do so I find she must bear this cost herself and this section of her claim is dismissed.

With regard to the tenants claim for towing her motor home; I find as the tenancy ended because of the landlords breach of the *Act* the tenant was forced to move and consequently she is entitled to recover the towing charges for her motor home to the sum of **\$335.66** pursuant to s. 67 of the *Act*.

With Regard to the tenants claim for moving truck costs I also find as the tenant was forced to move out she is entitled to recover these costs from the landlord to the sum of **\$109.68** pursuant to s. 67 of the *Act*.

The tenant is entitled to recover her security deposit from the landlord pursuant to s. 38 of the *Act* and the sum of **\$625.00** is included in her monetary award. A Monetary Order has been issued to the tenant as follows:

Recovery of rent	\$2,500.00
Moving truck	\$109.68
Security deposit	\$625.00
Total amount due to the tenant	\$3,570.34

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,570.34**. The order must be served on the respondent and is enforceable through the Provincial Court 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*.

Dated: April 13, 2011.

Residential Tenancy Branch