



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC, OLC, RP, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order, an order that the landlord comply with the Act and an order that the landlord provide services or facilities. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?
Should the landlord be ordered to comply with the Act?
Should the landlord be ordered to provide services or facilities?

Background and Evidence

The parties agreed on the following facts: The rental unit is located in the basement of a residence in which the upper floor is a separate rental unit. For the first 7 years of his tenancy, the owner occupied the upper floor. When the rental unit was sold, the upper suite was rented out to a series of tenants. The tenant is obligated to pay 40% of the utility bills for the residence. In the past, the utility accounts were in the name of the occupants of the upper unit.

The tenant testified that from February 23 – March 18, he had no natural gas service and therefore had no central heat or hot water. The parties agreed that the tenant deducted \$250.00 from his rent in compensation for the loss of this service for that period.

The tenant testified that in the past 3 years, he has had numerous problems with the various tenants who have occupied the upper suite. The tenants were often excessively noisy, some were known to the police who would occasionally attend to address complaints and the occupants of the upper suite would not always pay the utility bills despite having received the tenant's share of the payment. The tenant lost service on one occasion for several days because the occupants of the upper suite did not pay their bills. The tenant testified that he complained to the landlord repeatedly and that some of the tenants were evicted as a result of his complaints. The tenant seeks \$5,000.00 for loss of quiet enjoyment of the rental unit during the past 3 years and in compensation for the loss of utilities from February 23 – March 18.

The landlord acknowledged that there had been a series of problem occupants in the upper suite and further acknowledged having received numerous complaints from the tenant. The landlord argued that she had taken action to evict the various occupants of the upper suite when problems arose and expressed regret that there had been problems with utility payments and with service having been discontinued periodically.

Analysis

With respect to that part of the claim in which the tenant seeks compensation for loss of natural gas service from February 23 – March 18, I find that the tenant accepted a \$250.00 reduction in his rent in compensation for this interruption in service and that he is therefore stopped from claiming further compensation. I dismiss that part of the claim.

I also dismiss the claim for orders that the landlord comply with the Act and provide services as it is clear that natural gas service has been re-established.

The tenant had a statutory right to quiet enjoyment and I find that the actions of the occupants of the upper suite deprived him of that quiet enjoyment. Although I accept that the landlord acted to end those tenancies, there was still a period in which the tenant was not able to fully enjoy his home.

It is impossible to establish a formula under which one can calculate a precise amount to which the tenant would be entitled and as a result, any award is arbitrary. Taking into account the length and nature of the disturbances, I find that an award of \$1,800.00 will adequately compensate the tenant, which represents approximately \$600.00 per year or \$50.00 per month. I award the tenant \$1,800.00 and direct him to deduct this sum from future rent owed to the landlord.

Conclusion

The tenant is awarded \$1,800.00.

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 01, 2011

Residential Tenancy Branch