



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

The tenant seeks a monetary order in the sum of \$1,400.00 as for compensation for damage and/or loss.

All parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Is the tenant entitled to the monetary award sought?

Background and Evidence

This tenancy began January 1, 2011 and ended on April 1, 2011. The tenant says she is claiming \$1,400.00 for loss of quiet enjoyment of her rental unit. The tenant says that there was a child running back and forth in the suite above hers and she was never advised that children lived in the building. The tenant says she approached the tenant upstairs and did not receive cooperation. The tenant says the running back and forth affected her health. Further the tenant says that other tenants in the building were smoking marijuana and/or cigarettes. In addition the tenant says that she was without heat for 9 days in late February, 2011 when it was minus 35 degrees. The tenant testified that the landlord told her he was glad to hear she was leaving. The tenant testified that she believes she is entitled to a monetary award equivalent of 2 months' rent (at \$550.00 per month) and \$300.00 for moving costs because she believes she was forced to vacate.

The landlord says he investigated all of the tenants' complaints thoroughly and noted that there was nothing to the complaints regarding the child running back and forth. The landlord says he did his best for this tenant and could not please her so it was true that he was happy to hear she was leaving. The landlord says the building is not an adult oriented building and the tenant knew there are children living in the building. With respect to the smoking issue the landlord confirmed the building is to be non-smoking and he did discover that some tenants were smoking out their windows and it has been

reported that this tenant was smoking too. With respect to the heating matter the landlord says he received a call from the tenant on January 22, 2011 that she had no heat. The landlord attended the rental unit on February 23, 2011 with the heating contractor and discovered the floors were still warm in the rental unit and the heat was set at 17 degrees centigrade. The heating contractor did determine however that the heat could go no higher than 17 degrees centigrade so a part was ordered to repair the boiler and the repairs were complete on March 2, 2011.

Analysis

With respect to the claim for heating loss I find that the tenant was without adequate heat for 9 days. Rent was fixed at \$550.00 per month divided by the 28 days of February = \$19.64 per day. $\$19.64 \times 9 \text{ days} = \176.79 . I will allow the tenants' claim in this sum.

With respect to the other claims made by the tenant regarding the loss of quiet enjoyment from noise of a child running upstairs and from other tenants smoking, the onus or burden of proof is on the party making the claim. I find that the tenant has failed to prove that a child was running upstairs or that other tenants were smoking in the rental unit and that the tenant suffered a loss as a result. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case here.

Conclusion

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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*.
